Commissioner for Ethical Standards in Public Life in Scotland

CONDUCT of MEMBERS of the SCOTTISH PARLIAMENT

Report by

the Commissioner for Ethical Standards in Public Life in Scotland

on

complaint no. MSP/2083/17-18/14

Complainers:- Identity withheld

Respondent:- Ms Elizabeth Smith, MSP

1 May 2018

Commissioner for Ethical Standards in Public Life in Scotland
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CONTENTS

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1.0 Introduction

1.1 The Code of Conduct for Members of the Scottish Parliament ("the Code") has been approved by the Scottish Parliament under its Standing Orders to provide a set of principles and standards for its Members. For the purpose of considering these complaints, I considered that the 6th Edition, Revision 1 of the Code was relevant. It was published by the Parliament on 8 June 2016.

1.2 The applicable provisions of Volumes 1, 2 and 3 of the Code are set out in part 7 of this Report.

1.3 Investigation of the complaint has been undertaken in terms of the Scottish Parliamentary Standards Commissioner Act 2002 ("the 2002 Act") and the Directions by the Standards Procedures and Public Appointments Committee dated 1 March 2012.

1.4 This Report falls to be submitted to the Parliament in terms of section 9 of the 2002 Act.

1.5 The complainers requested that their identities were not disclosed during my investigation into their complaint. The complainers were of the opinion, given the subject matter of their complaint, that their identification could impact on the safety and wellbeing of a child under the age of 16. They also considered that their identification might place them at risk of intimidation from others. In the circumstances, I agreed to exercise my discretion in terms of section 7(1)(c) of the Scottish Parliamentary Standards Commissioner Act 2002 not to inform the member of the names of the complainers. I lodged my report on this matter with the Clerks to the Standards, Procedures and Public Appointments Committee on 20 November 2017.

2.0 Complaint

2.1 The complaint is about Ms Elizabeth Smith MSP ("the respondent"). The respondent is an MSP (Scottish Conservative and Unionist) for the region of Mid Scotland and Fife and was first elected in May 2007. She is, and was at the material time, a member of the Parliament's Education and Skills Committee. Ms Smith is also her party's Shadow Cabinet Secretary for Education and Skills. She is: Convenor of the Cross Party Group on Colleges and Universities; Co-convenor of the Cross Party Group on Sport; and a member of the Cross Party group on Science and Technology. The respondent was, until October 2017, a member of the Board of Governors of George Watson's College and had registered this interest in her

Parliamentary register of interests. The respondent's register of interests for 2016 and 2017 are attached at **Appendix 4**.

2.2 The complaint was made by letter dated 13 November 2017. Further clarification was sought from the complainers and they provided this via email on 11 and 21 December 2017. On 14 February 2018 the complainers provided, via a link to a cloud based internet storage site, access to copies of documentation referred to in the complaint. The documentation concerned the alleged mistreatment of their child at George Watson's College. Two sets of complaint documents were provided. Both sets contained what the complainers referred to as a 'dossier' and an 'addendum'. One set had been submitted to the College in support of their complaint and the other, which the complainers allege was different, was attached to an email they sent to the respondent and other MSPs at the Scottish Parliament on 6 January 2017. Both sets of the documentation extend to 486 pages and contain information relating to a number of individuals, including children outwith the complainers' family.

2.3 The letter of complaint and clarification emails from the complainers are attached as **Appendix 1**. I have not attached copies of the 'dossier' or 'addendum' detailing the allegations in relation to George Watson's College, given the volume and nature of the material which they contain. I have, nevertheless, considered the detail of both versions of the documents and note that they refer to the specifics of the complainers' allegations about the treatment of their child at George Watson's College, and to the handling of their complaint by the staff and governors of the College. I did not consider there to be any material difference between the documents sent to the College and those sent to the respondent on 6 January 2017.

2.4 The complainers allege that the respondent has breached the Data Protection Act 1990. The investigation of allegations of this nature fall outwith my jurisdiction and, accordingly, I have not considered them further. The allegations made against the respondent which fall within my jurisdiction relate to conduct, including failure to observe confidentiality requirements, lobbying and paid advocacy. The complainers provide lengthy explanations in relation to the detail of their complaint. They can be summarised thus:

- that the respondent disclosed information to others to which she had privileged access as an MSP. Specifically, it is alleged that on 6 January 2017, the respondent forwarded an email that the complainers had sent to her earlier that day at her parliamentary email address, containing a link via which their 'dossier' and 'addendum' could be accessed;

- that the respondent showed prejudice and hostility toward the complainers and failed in her duty to listen to 'both sides of a story';

- that the respondent owed a duty of confidence to the complainers' constituency MSP, and that she had failed to observe that in her behaviour towards him in relation to the complaint. It is also alleged, on the basis of comments she had made about him in correspondence, that the respondent had behaved disrespectfully toward the complainers' constituency MSP;

- that the respondent gave preferential treatment to lobbyists, namely George Watson's College;

- that the respondent exerted parliamentary influence and attempted to thwart the complainers' attempts to pursue child protection issues in the Parliament;

- that the respondent covertly used her own private email to deal with the complainers' correspondence;

- that the respondent had a conflict of interest and acted with a lobbying organisation in a way which discredited the Parliament.

2.5 The complainers make reference in their complaint to a number of different sections of both the 6th and 7th Editions of the Code which they allege have been breached by the respondent. Having regard to the dates upon which the matters referred to in the complaint are alleged to have taken place, as referred to at paragraph 1.1 of this report, I consider that the provisions of the 6th Edition, Revision 1 of the Code are applicable.

3.0 Response

3.1 The respondent replied to the initial complaint on 25 November 2017. She provided further responses on 9 December 2017 and 12 March 2018 to my requests for further clarification about her correspondence and interaction with the complainers. The responses are attached as **Appendix 2**. Under cover of her letter of 12 March, the respondent supplied copies of emails, sent from or received by her at her parliamentary email address, which she had provided to the complainers in response to a subject access request made by them under the Data Protection Act. The emails related to discussions between her and others regarding the complaint about George Watson's College.

3.2 In her written responses to the complaint, the respondent denied that she had ever used her parliamentary position to speak about the complainers' case. She stated that it would have been a clear conflict of interest for her to do so. She advised that, when the complainers contacted her at her parliamentary email address on 6 January 2017, she immediately recognised that she was unable to engage with them without a conflict arising and advised them accordingly. She denied that she had inappropriately shared the information that they had sent to her.

3.3 The respondent confirmed that, on 6 January 2017, she forwarded the email sent to her that day by the complainers to the then Chairman of the Board of Governors and to the College's Principal. She advised that George Watson's College were involved in legal proceedings with the complainers in relation to allegations which they had made about the College. In that context, the governors had been advised to alert the Chairman and the Principal if they were approached by the complainers. She further stated that the Chairman of Board of Governors had received legal advice that the complainers' 'dossier' and 'addendum' were able to be disclosed to the College governors. She and the other governors had been provided with access to those documents in December 2016 and she was aware that both the chair of the Board of Governors and the College Principal had had sight of them.

3.4 The respondent denied that she had inappropriately shared information with or about the complainers' constituency MSP, or that she had behaved disrespectfully towards him. She advised that she had transferred the correspondence received from the complainers at her parliamentary address to her private email account on the basis that she was not dealing with the matter as an MSP. She advised that she did so having regard to the very sensitive nature of the information relating to children contained in the complainers' 'dossier' and 'addendum', to ensure that they could not be seen by anyone who should not have access to them. The respondent stated that she had never, at any time, used her parliamentary position to speak about the complainers' case, or attempted to bring influence on the part of George Watson's College to bear in relation to it. The respondent's position was that her involvement in and discussion about the complaint against the College took place in her role as a governor, within the proper governing channels of the College.

4.0 Admissibility of the complaints

4.1 Stage 1 of the investigation of a complaint requires an assessment of admissibility as set out in section 6 of the 2002 Act. In assessing admissibility, the key tests are whether the complaint is relevant, whether the complaint meets the requirements for form, content and execution and whether the complaint warrants further investigation if it appears after an initial investigation that the evidence is sufficient to suggest that the conduct complained about may have taken place.

4.2 I concluded that the extensive details of the complaint and its apparent relevance to the respondent's obligations under the Code enabled me to find that the complaint was admissible. I wrote to the respondent and to the Clerk to the SPPA Committee on 10 January 2018 to that effect. A copy of my letter is attached as **Appendix 3.**

5.0 Investigation and Findings

5.1 The complaint sets out in detail the actions on the part of the respondent which are alleged to involve a breach of the Code. I met with the complainers to discuss with them the investigation process and their request that their identity be withheld.

5.2 In view of the complex nature of the complaint, I decided that an interview with the respondent was appropriate to explore the nature and extent of her interaction with the complainers. This took place on 19 March 2018. As already noted, the respondent provided copies of emails and other correspondence between her and a variety of others in support of her position in relation to the complaint.

5.3 The first, and main, element of the complaint concerns the respondent's disclosure of the email which the complainers sent to her on 6 January 2017. The complainers emailed the respondent regarding what they thought was her role as a member of the Parliament's Education and Skills Committee in helping to formulate 'Respect for All' - the Scottish Government's national approach to anti-bullying. They wrote, individually and in similar terms, to all members of the Education and Skills Committee and of the Equalities and Human Rights Committee. The complainers advise in their complaint that it

was only later that they discovered that the 'Respect for All' approach was in fact being considered by the Equalities and Human Rights Committee. They gave me a list of other MSPs to whom they sent emails on 6 January 2017 containing the link to the 'dossier' and 'addendum'. A copy of the email sent to the respondent, and her response to it is attached at **Appendix 5**. A copy of the list of recipients provided by the complainers is included at **Appendix 6**.

5.4 The complainers submit that, because they had approached the respondent in relation to a matter of national importance, they should be treated for the purposes of the Code as her constituents in that regard, notwithstanding their geographical location. They allege that the respondent was bound by the confidentiality requirements contained in the Code, and that she had breached those by disclosing the correspondence they had sent to her.

5.5 There is no information in the email which the complainers sent to the respondent which would have alerted the respondent to the fact that similar emails had been sent to others. The email contains a link to a cloud based storage site via which copies of the complainers' complaint 'dossier' and 'addendum' in relation to their complaint about George Watson's College could be accessed.

5.6 In the last paragraph of the email, the complainers make reference to the respondent's position as a governor of the College, and they suggest that she should excuse herself from any parliamentary discussions in relation to the points they raise on the basis of conflict of interests. They go on to suggest that, should the respondent feel motivated to help them resolve their complaint about the College, then they would be happy to brief her privately.

5.7 The complainers are of the opinion that the email they sent to the respondent, and the linked 'dossier' and 'addendum', were private and confidential. They allege that the versions of the 'dossier' and 'addendum' included with the email differed from those previously submitted to individuals at George Watson's College and to others in support of their complaint because, together with the email they were attached to, they contained new, confidential, material information. They allege that the respondent was under an obligation in terms of the Code to treat all of the documents confidentially and not to disclose them.

5.8 The complainers also contend that the respondent had a duty to listen to both sides of a story and that, by not accepting the invitation in their email of 6 January 2017 to brief her in relation to their complaint, the respondent had breached her obligations under the Code. They further allege that the respondent's actions in seeking guidance from the College's lawyers, rather than parliamentary clerks, in relation to her proposed response to their email were inappropriate and amounted to the respondent giving preferential treatment to a lobbyist, namely George Watson's College.

5.9 At interview, the respondent advised that she was aware of the complaint about George Watson's College by virtue of her role as a governor at the College. The complaint had been discussed amongst the governors at governing council meetings. She advised that the complainers had refused to allow the complaint 'dossier', which they had initially provided to the Chairman in support of their complaint, to be shared more widely amongst the College governors and others. She explained that, after the complainers

escalated their complaint to external bodies, including the Master of the Merchant Company and the Registrar of Independent Colleges, the Chairman had received legal advice to the effect that the complaint documentation need no longer be withheld from the members of the governing Council. The respondent advised that the complainers' 'addendum' contained complaints about the board of governors generally, and it was impossible for the governors to provide responses to those if they were unable to understand the nature of them. The respondent referred me to a copy of an email that she had received from the Chairman on 28 December 2016 advising of the College's revised position in relation to the confidentiality of the documents. She said that she and the other governors had been given access to the complainers' 'dossier' and 'addendum' shortly thereafter and that she had read them in full.

5.10 The respondent advised that, when she received the email from the complainers on 6 January 2017, she considered it carefully. She recognised the link to the complainer's 'dossier' and 'addendum' as being the same as the link sent to her by email previously in her role as governor to allow her to access the documents. She was aware, therefore, that the documents related to the complaint against George Watson's College. On that basis, she concluded immediately that she could not engage with the complainers in relation to the requests within their email given her conflict of interest. When the respondent received the email, she was not aware that similar information and requests had also been sent by email to other MSPs.

5.11 The respondent said that she gave careful consideration to whether to alert colleagues at the College that she had received the email from the complainers. She was mindful of the instructions she had received in relation to any approach being made to her by the complainers about their complaint and considered, given the content of the email and the attachments, that this was such an approach. On that basis, she decided to forward the email to the Chairman of the Board of Governors and the College Principal. She did not consider herself to be disclosing any material which was confidential, on the basis that she was certain that both of those individuals had already seen the documents.

5.12 The respondent was clear, given the very obvious conflict of interest, that she was unable to deal with the matter in her role as an MSP. Moreover, she was not a member of the Committee considering the 'Respect for All' approach. Accordingly, she was of the opinion that any actions which she took in relation to her interaction with the complainers would be as a governor of the College. Given the sensitivity of the situation in relation to the complaint about the College, she wished to ensure that her response was appropriate and she sought advice on that matter from the College's lawyers. The respondent considered that to have accepted the complainers' offer of a private briefing in relation to their complaint would have been entirely inappropriate.

5.13 The complaint includes a number of other allegations, which I have summarised in paragraph 2.5 of this report, relating to the respondent's conduct toward their constituency MSP and actions on her part which they contend give rise to a breach of the Code provisions relating to lobbying and paid advocacy. The complainers referred me in their letter of complaint to quotes taken from correspondence between the respondent and others as evidence in support of these elements of their complaint. As referred to in

paragraph 3.1, I had the benefit of unedited copies of the correspondence which were provided to me by the respondent.

5.14 I considered the correspondence in some detail. I found no evidence to suggest that the respondent had engaged in any parliamentary activity, or had engaged with complainers' constituency MSP in her role as an MSP, in relation to the complainers or their complaint. The email exchanges I was referred to did not include evidence of the respondent acting in her capacity as an MSP or as a paid lobbyist offering strategic advice on parliamentary matters. Whilst I accept that the dialogue referred to by the complainers is contained in email correspondence exchanged with the respondent at her parliamentary email address, the exchanges appear to relate solely to the respondent's involvement with the complaint in her role as a governor of George Watson's College.

The Code

5.15 The complainers allege that the respondent was acting in her role as an MSP in undertaking the actions referred to in the complaint. As referred to in paragraph 5.14, I was unable to identify any instance, from the evidence provided, of the respondent dealing with the complainers or their complaint in her role as an MSP. Similarly, no evidence was provided that showed the respondent to have lobbied or advocated on behalf of George Watson's College in her parliamentary role. I do not consider that the act of corresponding from a parliamentary email address is, in itself, evidence that a member is acting in their role as an MSP. There is nothing in the Code which prohibits the use, within reason, of parliamentary email facilities for non parliamentary purposes.

5.16 I had some difficulty with the complainers' assertion that they had approached the respondent solely in her role as an MSP on 6 January 2017 and that their expectation was that she should continue to deal with their requests in that capacity. The complainers' email refers to the respondent's "association with the school in question" in relation to the specifics of their complaint about George Watson's College. The complainers had already lodged a detailed complaint with the authorities which included specific allegations in relation to the Board of Governors, of which they knew the respondent was a member. They made reference to the fact that they considered the respondent to be conflicted and cautioned her against acting in her parliamentary role in relation to the matters raised by them.

5.17 Paragraph 1.3 of Volume 1 of the Code makes clear that the Code relates to members whilst conducting their duties as members of the Parliament. It specifically states that it does not cover the activities of members in other circumstances, for example, in relation to private and family life. For the reasons set out in paragraphs 5.14 and 5.15 of this report, I am satisfied that the respondent dealt with the complainers' correspondence in her capacity as a governor of George Watson's College. Accordingly, I find that the provisions of the Code did not apply to her in undertaking the actions complained of by the complainers.

5.18 I have, nevertheless, given consideration to whether the confidentiality requirements contained in the Code could have applied in relation to the respondent's disclosure of the complainers' email on 6 January 2017. The complainers referred me to paragraph 7.4.5 of the 6th Edition of the Code in

relation to this element of the complaint. I also considered whether paragraph 8.1.6, which sets out the requirement on MSPs to respect individual privacy when representing their constituents' interests, could be relevant.

5.19 The complainers contend, on the basis that their approach to the respondent was in relation to the national issue of the 'Respect for All' anti-bullying strategy, that they should be treated as constituents of the respondent in that connection. However, I have found no basis for that contention in section 8 of the Code. The Code does not differentiate matters of national interest or importance from other forms of constituent representation. The complainers do not reside within the region which the respondent represents and, accordingly, they are not her constituents. The obligations contained in section 8 of the Code, including those in relation to confidentiality in paragraph 8.1.6 of the Code could not, therefore, have applied to the respondent in any of her dealings with them.

5.20 Section 7.4 of the Code sets out the confidentiality requirements which require to be adhered to in relation to parliamentary proceedings. Paragraph 7.4.1 sets out the generality and imposes a requirement to treat the matters referred to in paragraph 7.4.2 confidentially. These are all documents and discussions made available to MSPs in relation to committee business. Paragraphs 7.4.4 and 7.4.5 prohibit specific types of behaviour but do not expand on the list of matters set out in paragraph 7.4.2. Paragraph 7.4.3 prohibits the disclosure of confidential committee material to "other MSPs who are not members of the committee or committees for whom the material was intended", which implies that the prohibition only applies to MSPs who are members of that or those committees. The guidance contained in Volume 3 of the Code in relation to the confidentiality requirements imposed by section 7.4 assists with interpretation and states that certain material may be 'agreed as confidential by committees', which also tends to support the view that the confidentiality requirements contained in section 7.4 relate only to information or documents which are under consideration by a committee in which the member participates.

5.21 I concluded that an unsolicited email such as that sent by the complainers to the respondent, who was not a member of the committee which was dealing with the 'Respect for All' strategy, did not fall within the categories of documents or information to which the confidentiality requirements in section 7.4 apply. In my opinion, that would have been the position in terms of the Code, even if I had concluded that the respondent was acting in her role as an MSP when she disclosed the complainers' email on 6 January 2017

5.22 Paragraph 7.4.6 of the Code applies to other documents and information, in respect of which members are required to exercise their judgement, which is what the respondent did in this case. I have concluded that she did so as a governor of George Watson's College, and not in her capacity as an MSP. Whilst I accept that the paragraph directs members to seek the advice of the relevant clerk "in cases of doubt", it does not prohibit members from seeking advice elsewhere. Indeed, paragraph 3.2.1 of the Introduction to the Code, in Volume 1, which invites members to seek the advice of the Standards Clerks if they are uncertain about how the rules apply, acknowledges that members may also choose to consult their own legal advisers and other relevant professionals. I do not, therefore, find that the respondent has breached any of paragraphs 7.4.4, 7.4.5 or 7.4.6 of the Code.

6.0 Conclusion

6.1 On the basis of my Investigation and Findings as contained in section 5 (paragraphs 5.3 to 5.22) of this report, I have concluded, in respect of the complaint against Ms Elizabeth Smith MSP, that she was not in breach of any of the provisions of the 6th Edition, Revision 1 of the Code as alleged by the complainers.

7.0 Extracts from the Code of Conduct

Volume 1

1.3 It is important to note that these volumes relate to the conduct of all members in relation to duties connected to being a member of the Scottish Parliament. It does not cover the activities of members in other circumstances, for example:

- members' private and family life;
- members expressing their political views (in their capacity as a member of a political party or organisation);
- members who are Ministers, when they are acting in their capacity as Ministers of the Scottish Government and carrying out functions of the Scottish Government covered by the Ministerial Code.

Volume 2

7.4.1 It is the intention of the Parliament that its proceedings and printed material be open to the general public. This should be the basis on which members work, but there may be times when members will be required to treat discussions, documents or other information relating to the Parliament in a confidential manner, as described in paragraph 7.4.2 below.

7.4.2 All drafts of committee reports, and committee reports which, although agreed by a committee and no longer in draft, have not yet been published, should be kept confidential, unless the committee decides otherwise. In addition the following should be treated as confidential:

- briefing provided to members by Parliamentary staff for particular members` information only;
- documents produced during a private session of a committee;
- evidence submitted to a committee sitting in private from a witness which it has been agreed can be treated as confidential;
- any other documents or information which the committee has agreed should be treated as confidential; and
- minutes of private discussions.

7.4.3 Given the potential damage that the unauthorised disclosure of confidential committee material can do to the standing and integrity of a committee it is essential that all members respect these rules. This means that, unless the Parliament or the relevant committee has agreed otherwise, such documents should not be circulated, shown, or transmitted in any other way to members of the public (including those in Cross-Party Groups), media or

to any member of any organisation outwith the Parliament, including the Scottish Government, nor to other MSPs who are not members of the committee or committees for whom the material was intended.

7.4.4 It is unacceptable for members to provide the media with off the record briefings on the general contents or 'line' of draft committee reports or other confidential material or information. Disclosures of this kind can also seriously undermine and devalue the work of committees.

7.4.5 It is also unacceptable, unless the Parliament or the relevant committee has agreed otherwise, to disclose any information to which a member has privileged access, for example, derived from a confidential document or details of discussions or votes taken in private session, either orally or in writing.

7.4.6 In the case of other documents and information members are requested to exercise their judgement as to what should or should not be made available to outside bodies or individuals. In cases of doubt members should seek the advice of the relevant clerk.

7.4.7 Where a committee member wishes to express dissent from a committee report, the member should only make this public once the committee report has been published in order to avoid disclosing the conclusions of a draft report.

Volume 3

7.8 Certain information may be agreed as 'confidential' by committees or subcommittees. This is not through any desire to withhold information from the public. Rather, there are a number of difficulties which could arise through the unauthorised disclosure of confidential material:

- public discussion of draft reports might give preliminary views a status they do not warrant and lead to recommendations or findings not adopted by the committee being prematurely attributed to it;
- early release of information about a committee report could also result in *unfair party political advantage;*
- it may be difficult for members to freely deliberate on the content of a draft report;
- it may be difficult to get witnesses to give evidence in confidence if members are shown to be incapable of treating their proceedings in confidence;
- it could lead to a loss of mutual trust between members and a breakdown of confidence in the operation of the committee.

Bill Thomson
Commissioner

1 May 2018

Commissioner for Ethical Standards in Public Life in Scotland
Thistle House
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13 November 2017

Elizabeth Smith MSP: Breach/es of Code of Conduct

Dear Commissioner,

We attach a formal complaint about Elizabeth Smith MSP. We believe the information provided should be largely sufficient, but we would of course be happy to provide whatever further supporting evidence or intelligence you may require.

Please note that as far as possible in keeping with natural justice, we would ask for our complaint to be handled confidentially and with utmost discretion. We believe our child has a statutory right to privacy. And she herself is genuinely concerned about further bullying or other immediate or future harms should her name become publicly associated with this case. As a family we are also concerned about further personally-directed intimidation from the MSP's professional network, as we feel we have already extensively suffered as a consequence of pursuing our wider complaints. We understand that the details of our case will need to be circulated to various legitimate parties, including the MSP in question. But we ask that all possible steps be taken to protect our child's (and therefore our family's) identity from entering the public domain, by withholding identifying details from circulation wherever possible, and by reminding all recipients of this information to that effect.

Yours sincerely,

[redacted]

ELIZABETH SMITH MSP:
BREACH/ES OF CODE OF CONDUCT

We wish to lodge a formal complaint about Elizabeth Smith MSP. We believe her repeatedly, grossly and knowingly to have breached the standards of ethical and/or legal actions reasonably expected of her role in multiple ways. This appears to have been deliberately to harm us and deflect our institutional child abuse concerns, serving her own personal interests as well as the vested interests of her private allegiances. We describe below various ways in which we consider her actions incompatible with the MSP's Code of Conduct, such as:

- Breach of our confidence
- Breach of our MSP's confidence
- Breach of the Data Protection Act
- Disrespect/discourtesy to our MSP
- Prejudice, hostility, persecution, & unilateral access
- Preferential access to lobbyists
- Inappropriate parliamentary influence
- Covert use of private email
- Conflict of interest
- Vested interest

Introduction

Contextual background

This issue began with our individually writing confidentially to all then sitting members of the Education & Skills Committee (and subsequently to all EHRC members). We hoped to submit our important evidence for the government's ongoing anti-bullying consultation, as we were finding it hard to identify an open channel and believed the Education committee to be handling it. This message included substantial personal details describing our complaint (six months previously) to one of Scotland's largest independent schools, in the wake of our child's lifelong injury in their care, which resulted from severe long-term bullying and other institutional child abuse that we believed to be deeply rooted there. We had recently also lodged a complaint with the Registrar for Independent Schools, after the school's own complaint process had proven to be corrupt. Recent judgments by HMIE and Scottish Ministers have vindicated these complaints[1].

[1] Our raising of alarms about the school has recently been vindicated. Following our complaint to the Registrar for Independent Schools last year, the Scottish Ministers have declared themselves satisfied that the school in question is at risk of becoming objectionable on the ground that *"the welfare of a pupil attending the school is not adequately safeguarded and promoted there"*. They therefore consider it necessary, in accordance with section 98E(1)(a) of the 1980 Act, to impose conditions on the running of the school, particularly with respect to its unsatisfactory governance and complaint handling.

Ms Smith at that time and until recently served as a Governor at that school. So our letter to her was distinct (see below). We then believed that two other governors were confidentially handling our case on the Board's behalf, and Ms Smith had no direct hand in it. Latterly we have learned that this was far from true. She was in fact covertly engaged from early on, far more than any further governor, and we think with more influence even than the second individual formally handling our case. Long before we contacted her as an MSP and Committee member, Ms Smith had been highly dismissive of our concerns and pejorative about our motives, though apparently without ever having heard or read our evidence first hand.

Ms Smith was not just a governor. She was Chair of the school's education sub-committee. In that role she herself had primary responsibility for the safeguarding and child welfare issues that our complaints largely concerned. So when HMIE's recent Special Inspection found the school's practices and some policies in this regard inadequate that was her failure, perhaps more than anyone else's. And she already knew (soon after we lodged our main complaint, in July 2016) the school Principal had apparently privately admitted the school's child protection policies were unfit for purpose, blaming the governors. Ms Smith had a strong potential vested interest in deflecting our complaints about the school's inadequate safeguarding. She herself (see below) said she felt safe from reputational or political damage (including as her party's spokesperson on Education) *unless* our complaints were upheld.

Ms Smith's role as an MSP

It is important to establish at the outset that our direct interactions with Ms Smith were exclusively in her role as an MSP, specifically as a **member of the Education & Skills Committee**. Our informal advice is that because we approached Ms Smith on a matter of national importance the same provisions should apply as for constituents (even though we do not reside within Ms Smith's constituency). We believe that this must reasonably be considered the correct interpretation, as (like us) any member of the public would expect such treatment on approaching any MSP in such a way, even without expressing a need for strict confidentiality (as we did).

We believe there is no question that **Ms Smith was fully aware that we were approaching her in that role**. It was only later we discovered that the anti-bullying consultation was in fact being handled by EHRC. At the time we (reasonably) expected Education & Skills committee members to be handling it. So after unsuccessfully pursuing a route to contributing through various other channels, we wrote to each committee member individually. We believe every element of our communications supports that she **knew** we were approaching her in her parliamentary role, as no other construction of these facts is tenable:

1. Our 6 January 2017 message was sent to her parliamentary email **address**.
2. Our message **Subject** was "Respect for All - important submission to anti-bullying consultation".
3. The **opening words** of our message were "We are writing regarding your role in helping to formulate Respect for All, the Scottish Government's national approach to anti-bullying."

The Ministers' decision was partly informed by a report from a Section 66 Special Inspection of the school last month that details many dozens of areas in which the school must improve its child protection practices. These include significant revisions required in supporting the wellbeing of pupils; policy and practice in child protection; the role of the Governing Council and school leaders; approaches to complaint-handling and investigation; approaches to staff disciplinary matters; and approaches to school governance in general.

We have also engaged with the Equalities & Human Rights Committee with regard to improving child protection at independent schools, where our experience shows current statutory safeguards to be lacking. And we have recently replied to the Government's response in that regard. We believe our testimony to be of significant value in informing developing national policy.

4. The overwhelming majority of it **content** concerned parliamentary business.
5. We attached our data only to show that we had unique and important insights to **contribute** to the consultation, not asking for our complaints to be addressed.
6. She **replied** from her parliamentary email address.
7. Her reply recognised our message was "sent to me **at the Scottish Parliament**".
8. She **did not suggest** then that her reply was in any role other than as an MSP;
9. We wrote to **no other school governor** at this time (or during this period, beyond the two we believed to be handling our case) which she would have known that same evening after attending a special governors' meeting, so Ms Smith would also know that we had written to her explicitly in her role as an MSP (and Education & Skills committee member).

We have spelled out that our communications were unambiguously in Ms Smith's role as an MSP because we believe she might attempt to evade her duties under parliament's Code of Conduct by deploying a bogus claim that she was acting not as an MSP but in her role as a school governor. We have seen her potentially lay the groundwork for such a gambit (where we feel we detect the characteristic signs of assistance by the **school's legal advisers)** in her most recent (4 August 2017) letter to us, accompanying her SAR release:

> *In all cases, the emails were received and sent because of my role as a governor at [the school].*

The documentary record leaves no doubt that any such pretence would be entirely false. We explicitly approached her as an **MSP**, specifically as a **member of the Education & Skills committee**. And she replied to us also in that role, from that parliamentary address. This necessarily also covers all associated communications directly resulting from our approach to her as a parliamentarian, such as the legal advice she solicited from the school's legal advisers on how to respond to us from her parliamentary address.

Our only special consideration of her being also a school governor came at the very end of our message to her, in a short paragraph we added because we hoped there might be a chance she would wish to act as an honest broker with the school. **This too was addressed to her in her role as an MSP,** in the hope that she would act with the impartiality and integrity we expected of an MSP**.** (Had we wished to contact her in her role as a governor, we could and would have done so via the school.) So we wrote in a spirit of goodwill, offering to brief her independently, aware that she might have heard only a partial filtered account of our case through the school. We wanted to let her reach an impartial judgment based on our real information, expecting Ms Smith at least to wish to hear our case. We felt that once being more fully informed about the issues we had identified, she could be in a unique position as an MSP with specialist education experience to be an honest broker and impartial go-between, to help resolve to everyone's benefit our concerns about the school's inadequate complaint process and handling (a view now vindicated by the Ministers' formal condition on the running of the school to prevent it becoming Objectionable, to improve and implement a new Complaints Policy). Thus we appended a single paragraph, holding out an olive branch to offer and **request a direct meeting**:

> *However, should you feel motivated as a school governor to open-mindedly explore our experience and perspectives with a view to helping positively to resolve these regrettable circumstances, we would be happy to extend our goodwill to brief you privately.*

Ms Smith shunned our offer. We later learned (see below) her response was reviewed and partly worded by the school's lawyers.

We were concerned that Ms Smith might be **innocently unaware** of the issues we had encountered; we wished potentially to protect her as a public servant from being unwittingly compromised (still then wrongly believing her to be an 'ordinary' school governor, uninvolved in

our complaint). Our message to Ms Smith was sent **before** we saw internal school messages (later provided to us by the Registrar for Independent Schools) that revealed her already then to have long been a **core protagonist engaged in deflecting our complaints** to the school — the **only** school governor with such close involvement, beyond the two other governors we believed we were solely engaged with.

At that point we genuinely expected that she would recognise that her first duty was neither to the school, nor even to parliament, but was ultimately **her responsibility to safeguard children**. Perhaps naively, we expected that by telling her of our deep concerns about unrecorded and unreported child protection failures at the school where she had a duty of care, and the lack of legislation covering this sector that enabled this to occur, while providing compelling evidence to support our welfare concerns, her **social conscience** would compel her at least to give us a fair hearing. We were wrong.

Summary of this complaint

We wrote to Ms Smith specifically in her role as a sitting member of the Education & Skills Committee (see below) both expecting and requesting appropriate confidentiality. But the reality was very different. On the surface she merely rejected our olive branch on contrived legalistic grounds, while apparently promising to respect our confidence.

It has recently emerged that behind the scenes she immediately **breached that confidence** in what to us was the worst possible way — by conveying our sensitive and privileged information directly to our opponents. We describe below the full circumstances as we now understand them, as we believe this context shows her actions to be knowingly in conflict with both the spirit and letter of the MSP's Code of Conduct in multiple regards (as well as the DPA). And we believe that circumstantially this strongly suggests she did so *intending* to harm us and/or specifically to materially advantage and/or protect her own and her external vested interests. Her actions have had a significant detrimental effect on our family, and have also set back our valid and important democratic lobbying for improved child protection throughout Scotland.

In the months since, we believe Ms Smith has continued to breach the MSP's Code of Conduct in multiple ways, by **acting primarily in the interests of a private organisation** in which she had and perhaps has a recorded Interest. We suggest various parts of the Code of Conduct that we believe may be relevant (many of which may also apply in sections beyond the ones where they are quoted). But this is outwith our expertise. So we would ask the Commissioner independently to consider which parliamentary or professional or legal rules or guidelines Ms Smith may have contravened.

In our view Ms Smith's actions have been so flagrant and so serious that she has shown herself unfit and **unsafe to hold any public responsibility** or position of trust, or to serve at all as an MSP representing the public's interests. We would ask Parliament to consider our evidence and take all steps appropriate in these circumstances. We would hope, this might include her immediate suspension pending full investigation. Most urgently, we consider her continuing as a member of the Education and Skills Committee both a risk and a hindrance to our effective participation in the democratic process, as we wish soon to ask to make further confidential representations to that committee, and can have no confidence that she would not use her position there inappropriately.

If Parliament accepts and agrees with our own judgment that this evidence compellingly shows Ms Smith MSP to have breached the Code of Conduct and behaved in a manner unbefitting an MSP, we would also request that she should not be allowed to resign 'quietly'. Now two years since our child's abuse, the school in question is still refusing to accept or investigate a single one of our concerns, even after the Scottish Ministers' and HMIE's interventions. And those interventions address only a fraction of our concerns. To seek justice and to ensure the school is finally addressing the uncomfortable realities we have revealed that we believe continue to harm children and families, we are faced with having to pursue our quest for a proper response by the school through further agencies or the courts. A **formal indictment** of one of the school's key

protagonists in deflecting our request for professional enquiry would significantly help in furthering that cause.

Complaints

1. Breach of confidence

> *members must not disclose any information to which a member has privileged access, for example, derived from a confidential document.*
> CODE OF CONDUCT FOR MEMBERS OF THE SCOTTISH PARLIAMENT: 7.4.5

TIMELINE

6 January 2017

Note: we understand the Chair of Governors resigned as a governor during the 6 January meeting, but stayed on afterwards in a special governorial role to handle our complaint.

1200h *from* us
We send Ms Smith our confidential message & personal dossier (at Parliament, in the course of her parliamentary business as sitting member of Education & Skills Committee).

1239h *to* the then Chair of Governors, & also to school Principal
Ms Smith forwards our message & dossier link, saying *"I have just received this. I am not sure of the circulation."*
Ms Smith failed to release this document in her DPA SAR provision

PM Special Board Meeting of Governors
Ms Smith at least orally shares the content of our email with governors, principal, & proprietors

1747h *to* (now ex-) Chair of Governors
Ms Smith, asks for school lawyers to review her draft reply to us (as an MSP)
Ms Smith failed to release this document in her DPA SAR provision

1922h *from* school Principal
He suggests sending our confidential data to John Edward, Director of Scottish Council of Independent Schools.
Ms Smith failed to release this document in her DPA SAR provision

Later? *to* school Principal
It seems reasonable to expect Ms Smith replied to Principal's 1922h message
Ms Smith failed to release this presumed document in her DPA SAR provision

Later? *to* SCIS Director[2]
It seems reasonable to expect Ms Smith acted on Principal's 1922h advice
Ms Smith failed to release this presumed document in her DPA SAR provision

[2] We as yet have no evidence that Ms Smith did in fact send our confidential dossier to John Edward, SCIS's Director, on or around 6 January, as the school Principal and Proprietor recommended. But it seems highly improbable she would have copied her message about our MSP directly to him out of the blue less than two

8 January 2017

1516h *to* ex-Chair of Governors
Ms Smith (1) suggests using private email *"in case"*; (2) asks for the school's legal advisors' recommendation on moving discussion of parliamentary business to personal email; and (3) recommends the school takes legal action against us.
Ms Smith failed to release this document in her DPA SAR provision

1526h *from* ex-Chair of Governors
He advises Ms Smith the school's lawyers will supply her response soon.
Ms Smith failed to release this message in her DPA SAR provision

9 January 2017

1103h *from* ex-Chair of Governors
He provides Ms Smith with the school's lawyers' *"suggested reply", attached.*
Ms Smith failed to release this document in her DPA SAR provision

1202h *to* ex-Chair of Governors
Ms Smith thanks him and confirms she will send this tomorrow.
Ms Smith failed to release this document in her DPA SAR provision

1209h *from* ex-Chair of Governors
He offers to clarify one of the lawyer's meanings, saying he will contact the lawyers.
Ms Smith failed to release this document in her DPA SAR provision

10 January 2017

1410h *to* us
Ms Smith replies to our message of 6 January, recognising our wish for confidentiality.

On 6 January 2017 (1200h) **we wrote in strict confidence to Ms Smith** in her capacity as a member of the Education & Skills Committee, attaching a substantial dossier of evidence outlining our concerns with a substantial volume of our personal data. This communication covered most of the material we took to various other MSPs at the time (also in strict confidence). But due to her special relationship with this school, our covering email to Ms Smith was *individual* with additional content. The Dossier we confidentially appended with our message to Ms Smith was also **unique** to MSPs and different to any other dossier sent at any time to any other person connected with the school[3].

We fully expected that any MSP would automatically treat any such material, received in the course of their public duties and sent to their parliamentary address, as privileged/confidential and handle it in accordance with their responsibilities as MSPs and with respect to the Data Protection Act. However, due to the sensitivity of the subject matter in terms of children's privacy, we took pains to especially emphasise that our communication was **private and highly confidential**. This was emphasised both within the dossier itself which was prominently marked as *STRICTLY CONFIDENTIAL*, and also in our covering message which stated:

> *Please treat this dossier with the utmost confidence, and do not share it further without our written permission.*

---

weeks later (19 January) unless it followed recent discussions about our case. Circumstantially we feel this strongly suggests additional communications that Ms Smith has not revealed.

[3] This means that any claim that the school governors or others were already in possession of similar such information would be invalid.

A few days later, on 10 January 2017, Ms Smith replied to us. She **acknowledged** the importance we had attached to the **privileged nature of the information** we had sent her, apparently affirming that this would be respected:

> *May I acknowledge receipt of the email you sent to me at the Scottish Parliament on Friday and also acknowledge the request regarding its confidential status.*

However, we have since discovered that just minutes after receiving it (6 January 2017 1239h) Ms Smith **forwarded our full message**, including the live link to the embodied confidential dossier containing our sensitive private information. She sent this to exactly the people we most wished it not to reach, namely the Chair of Governors, and also to the school Principal and proprietor (who was a prime focus of our individual complaints, and someone we had expressly refused permission for governors to share our dossier with). Her message was very brief:

> *I have just received this. I am not sure of the circulation.*

Despite the above facts, Ms Smith has repeatedly misinformed us with apparently unambiguous assurances **claiming to have never shared our data** in any way. If there are specialist 'weasel words' that qualify these statements as in any way technically defensible, that is beyond our ken as ordinary members of the public. So we suggest her words must be considered as we would reasonably interpret them. For example, in response to our Data Protection Act requests, Ms Smith wrote to us from her parliamentary address on 13 July 2017, wishing to make it:

> *absolutely clear that I have never used my parliamentary position to refer to the case you brought against [the school] or any related matters.*

Similarly, in her covering letter to us accompanying her SAR release (4 August 2017) Ms Smith unambiguously and we feel overzealously emphasised that she had never shared our data in any way:

> *I have adhered to all aspects of confidentiality at all times following the original request I received from [Parent] in line with the penultimate paragraph of his email to me on 6th January 2017 and which I guaranteed in response to him on 10th January 2017... I confirm that there was no sharing of this email correspondence with persons other than those who were recipients or senders of the emails concerned. I can confirm that the data that I hold about you, [Father] or [Child] has not been passed to and will not be passed to any other persons.*

We can find no way to interpret the above statements except as **calculated deception** (almost certainly drafted with the help of the school's lawyers). When considered in combination with the **multiple withholdings** of key documents to which we had a legal right under the DPA, and in her apparent efforts to **coordinate her selection of documents** to release with the school's own previous (also partial) releases via a special meeting with their representatives (we believe after she was no longer a governor) we feel this apparent duplicity is a damning indictment of Ms Smith's integrity.

We feel there can be no real doubt that Ms Smith betrayed our trust intentionally, as a willing agent for the school's interests, and in her own powerful vested interest, and counter to her duties as a paid public servant. We believe so she did in knowing contravention of the MSP's Code of Conduct. And we believe that after refusing our entreaties to listen independently to our case she was entirely aware that her actions were in direct conflict with our child protection cause, that we sincerely believed to be in the public interest, which as concerned citizens we were trying against the odds to represent. We find this hard to construe as anything other than her being a **willing and active participant** in the school's efforts to deflect proper investigation into our allegations of institutional child abuse, in a way that is entirely incompatible with her Code of Conduct.

Our experience suggests that Ms Smith considers herself above that reasonable expectation of confidentiality which we feel members of the public expect, and have a right to expect, from (explicitly) private communications with any MSP in the course of their parliamentary business. Her self-interested behaviour appears to us to undermine the democratic interest in members of the public feeling able to approach parliamentarians with reasonable trust that their private concerns will be respected as confidential. This apparent scorn for the interests of less powerful parties seems to us **extraordinarily dangerous**, to democracy, and perhaps even literally. Sometimes whistle blowers or members of the public may even fear for their physical safety if their confidential approach to inform a parliamentarian were to become public. In our own case, we were bringing what we believe to be important evidence regarding child protection that a vastly wealthy institution with deep connections in politics and the law was actively seeking to 'silence'. Its many intimidatory actions in the interim (see below) has done little to reassure us. We did, and do, fear for our family's wellbeing as a result. People like us need to trust we can approach MSPs in confidence.

2. Breach of our MSP's reasonable expectation of confidence

> *members must not disclose any information to which a member has privileged access, for example, derived from a confidential document or details of discussions ... either orally or in writing.*
>
> CODE OF CONDUCT FOR MEMBERS OF THE SCOTTISH PARLIAMENT: 7.15

TIMELINE

12 July 2016

0543h *to* Chair of Governors
Ms Smith offers to discreetly investigate our MSP.

19 January 2017

1412h *to* new Chair and ex-Chair of Governors, and Scottish Council of Independent Schools.
Ms Smith transmits detailed account of off-record discussion with our MSP.

1423h *from* new Chair of Governors.
Thanks Ms Smith, and comments that a legal letter the school's lawyers sent to us by all the governors seemed to have had 'no effect'.
Ms Smith failed to release this document in her DPA SAR provision

1428h *to* new Chair & Ex-Chair of Governors.
Suggests legal letter may have had opposite effect.
Ms Smith failed to release this document in her DPA SAR provision

1430h *from* SCIS Director
Thanks Ms Smith, and relates the topic to evidence he will give EHRC later that week.
Ms Smith failed to release this document in her DPA SAR provision

1430h *from* school Principal.
Suggests he might speak directly to our MSP.
Ms Smith failed to release this document in her DPA SAR provision

1442h *to* school Principal, copied to new Chair & Ex-Chair.
Suggests Principal waits to talk to our MSP until after EHRC evidence session.
Ms Smith failed to release this document in her DPA SAR provision

11 February 2017

1353h *to* Ex-Chair.
Ms Smith suggests that if she finds a chance she could suggest proposing a secret meeting of the school with our MSP, that we would not be told about.

When we approached our own MSP (Mr Andy Wightman) for assistance on engaging with Parliament on a political level with a view to helping to precipitate more effective welfare protections for children at independent schools, we did so on a clear understanding of absolute confidentiality. However, it appears Ms Smith soon got wind that another MSP was asking questions about bullying at Edinburgh schools, and (12 July 2106 0543h) offered surreptitiously to find out more, apparently using her parliamentary privileges to act as an agent on the school's behalf:

> *Who is the MSP incidentally? It might be worth finding out very discreetly if he/she really has asked Boroughmuir, Gillespies, Heriots, ESM, Academy etc for all their child protection policies. As you say, he/she must be acting for the parent.*

Early the following year, with our tacit consent, Mr Wightman informally approached Ms Smith in Parliament, largely with a view to 'sounding her out' to establish whether she might be an ally in our cause. It is our understanding that his presumption, like ours, was that **anything said between them would be considered strictly privileged**, as it concerned both constituency and parliamentary business.

We can therefore only describe ourselves as shocked and astonished when we later discovered that Ms Smith had in fact almost instantly breached his trust. She immediately secretly relayed a highly detailed 'blow by blow' account of her version of this conversation directly to our antagonists. She covertly provided our adversaries with **insider information** to which they had no right, we believe with the specific purpose of helping to undermine our legitimate efforts to pursue our case through proper channels, to their unwarranted benefit. Ms Smith herself acknowledges (and records in writing in her message of 19 January 2017 1412h) that their conversation was on an explicitly ***"off the record"* basis**, which we understand to mean it should not have been reported without his consent:

> *[He] went on to tell me that he (Wightman) had sight of all the paperwork, and then he asked if I would tell him, off the record, if there was some advice he could give to his constituent...*

On this occasion, Ms Smith forwarded what we believe would reasonably be considered privileged information about us to a number of people, **even beyond the school** itself. This appears to have been circulated to at least:

- the school's new Chair and ex-Chair of Governors;
- the school Principal and Proprietor, whose own alleged improprieties were the subject of some of our most serious complaints;
- John Edward, Director of the Scottish Council of Independent Schools (SCIS).

Her **sharing of our confidential data with the Director of SCIS** (a professional **lobbying organization**) is perhaps most startling of all, being beyond even the school's own immediate network. Notably this follows a 'suggestion' from the school's Principal on 6 January that she should forward our confidential dossier to him — apparently encouraging or inciting Ms Smith to breach her Code of Conduct, and the DPA. This might reasonably be considered more of an instruction, since in his role as a school Proprietor we understand he enjoyed greater formal seniority. Yet Ms Smith's DPA releases contain neither any reply or follow-up from her on or

around 6 January (which seems improbable) nor any prior contextual messages explaining why almost two weeks later she suddenly (to him, apparently, 'out of the blue') decided to include SCIS in her circulation list about our MSP. Circumstantially this appears strongly to suggest additional communications about us between Ms Smith and SCIS that she has not revealed.

To corroborate our reference above to the existence of a widespread conspiracy to cover up, we might add that when we later issued a Data Protection Act Subject Access Request to the Director of SCIS, he responded **categorically denying ever held any communications** about us or our case from the school or anyone connected to it (including Ms Smith, by name). Yet we also have a copy of his reply to her on 6 January (1430h) from his SCIS address with the official SCIS footer.

We believe Ms Smith and her allies never envisaged that we would ever have access to these documents. We are struck by the surreptitious way in which she apparently conducted these illicit breaches to the school. And it is notable that she seems to have so dishonestly intimated to us that our trust would be respected. It is our belief that she also failed to alert Mr Wightman to the fact that she would be relaying her version of his every word to the subjects of our complaints, thus warning him to be circumspect. It feels to us that she did the opposite, and 'played' him along. This seems to us grossly disreputable, and disrespectful to a fellow MSP.

We wish to emphasise that we do not believe Mr Wightman to have acted improperly or unwisely at any time. We believe he was acting in our best interests with our tacit consent and that he too had a reasonable right to expect appropriate discretion from Ms Smith.

3. Breach of Data Protection Act

> *Members ... shall not conduct themselves in a manner which would constitute a criminal offence*
> CODE OF CONDUCT FOR MEMBERS OF THE SCOTTISH PARLIAMENT: 7.9

TIMELINE

6 July 2017

1352h *from* us
We lodge Data Protection Act requests with Ms Smith at Parliament.

6-20 July 2017

to ex-Chair
Ms Smith appears to have approached the ex-Chair to obtain the school's input in guiding her selection of parliamentary documents to release to us under the DPA.

20 July 2017

1352h *from* ex-Chair to school Bursar (*copied* to Ms Smith)
Ex-chair proposes the three of them meet for around 90 minutes at the school premises.

1 August 2017

1300h *with* school Bursar and ex-Chair.
Ms Smith meets with school bursar and ex-chair, to discuss our DPA requests to Ms Smith as

an MSP and review the information previously shared with us by the School, it appears to select which of her own documents to release and which unlawfully to conceal.

4 August 2017

to us.
Ms Smith provides a package of printed documents as her DPA release, missing multiple items, notably we feel clearly important and conspicuously compromising ones.

We would emphasise that we are making no criminal allegation. We are unqualified to make any such judgment. And any criminal offence cannot, of course, be established until after it has been successfully prosecuted, so we interpret the Code of Conduct rule above to necessarily imply 'could' as well as 'would'. It is our understanding that intentional and improper withholding of data from a legitimate Data Protection Act request can be addressed as a criminal matter. And we expect in due course also to pursue this concern through the ICO and/or through the courts (possibly in combination with complaints about other associated withholdings by related bodies). It is for others to decide whether criminal or civil justice would apply in this case. But regardless of the outcome of any such actions, we consider this evidence highly pertinent to the overall context of this complaint, and consideration of whether Ms Smith is a fit person to represent the public.

In view of the evidence that had come to our attention indirectly, on 6 July 2017 we lodged a Freedom of Information request with Ms Smith with regard to her being a sitting member of the Education & Skills Committee, requesting all information held about a number of persons and bodies of relevance to our concerns. And on the same date we also lodged with her a Subject Access Request for all data held about our family or pertaining to us. (We had also lodged a separate FoI request with the Education and Skills Committee.)

Extraordinarily, it appears that Ms Smith then liaised closely with the school and its proprietor's representative in an apparent effort to **ensure that the documents she selected to release to us would tally with those the school had itself previously released**. We can find no other reasonable explanation for the sequence of events that followed. This began with the school's ex-Chair writing to the school's bursar on 20 July 2017 (1352h) asking for an urgent meeting. This appears to us self-evidently to follow prior unminuted and/or unreleased discussions between Ms Smith and the ex-Chair about the selection and handling of her data release as an MSP:

> *Liz and I would like to come and see you on your return from holiday on a number of points. We are both free all day on 1 and 2 August. The meeting might take about 90 minutes.*

The Bursar subsequently confirmed this meeting with them for 1pm on 1 August. And in his covering email to us accompanying a (grossly incomplete) SAR release from the Edinburgh Merchant Company Education Board (the school's Proprietor) on 29 September 2017 (1800h) he helpfully explained its purpose:

> *Liz Smith and [the Chair of Governors] contacted me at the end of July 2017 to set up a meeting to discuss a Freedom of Information Request and/or SAR the Scottish Parliament/Liz Smith had received from you. I met them both on 1 August to review the information previously submitted by the School.*

Ms Smith's duty under the Data Protection Act was simply to release to us all qualifying documents in her own possession. So we can identify **no justifiable reason for this meeting** to have taken place. Circumstantially it seems to us that its purpose can only have been to coordinate the censorship of embarrassing documentation in conspiracy with the school. We believe this apparent weeding out of potentially compromising documents that this process

somehow led her to believe we did not yet have is **incompatible with Ms Smith's legal obligations** under the DPA.

Ms Smith responded to our Subject Access Request a few days later on 4 August 2017 with a package of printed documents as her provision. Unfortunately for any such coordinated plans, the school's document management systems seem somewhat chaotic, and Ms Smith's release failed to include multiple items from her own systems already in our possession. (Our expert advice is that she had no need to seek consent from the recipients or senders of these emails; she could legitimately redact email addresses but we had a right to see names and content.) This omission notably includes documents that we regard as particularly compromising. Most significantly of all, this release **conspicuously omitted our highly sensitive 6 January 2017 1239h message** that she immediately forwarded to her private sector allies, from Parliament, which we believe compellingly demonstrates improper sharing of our confidential data.

We find it hard to interpret this flagrant deletion or omission other than as intentional, apparently in the hope of obscuring from us her seeming failure to conform to the MSP's Code of Conduct and/or what might generally be expected to be reasonable standards of professional behaviour by an MSP. In her covering letter with the data release, Ms Smith emphasised that she had undertaken the task of compiling what documents to release to us **personally** (in the interests, she claimed, of "confidentiality") and that she was **fully informed on her FoI duties** by expert professional advice. As such, this omission, we believe, shows her knowingly trying to cover up her impropriety.

Ms Smith included a covering list **iteming** the documents included, which verifies that this key document and the various other messages noted were missing, and that Ms Smith was therefore indeed apparently in prima facie breach of her legal duties under the Data Protection Act. It is our understanding that intentional breaches of the Data Protection Act can be a serious offence, though we are not qualified to know how this particular case concerning a senior public servant potentially construed as engaged in a coordinated effort to assist in the deflection and/or covering up of alleged institutional child abuse would be regarded by the courts. But we would welcome your advice on whether our lodging formal civil or criminal complaints would be a necessary avenue we should pursue in order for Parliament to be able to respond with its strongest sanctions.

4. Disrespect/discourtesy to our MSP

> *Members must treat other MSPs with courtesy and respect.*
> CODE OF CONDUCT FOR MEMBERS OF THE SCOTTISH PARLIAMENT: 7.5

We have already suggested Ms Smith's betrayal of our MSP's confidence was we believe unethical and incompatible with her duty to treat parliamentary discussions in confidence. But we would also regard her breach of faith as a fellow MSP profoundly **disrespectful and discourteous**.

This impression is compounded by the disrespectful terminology she adopts when reporting their alleged discussions (which of course reflect only her own projections and perspectives). This is exemplified by her repeatedly referring to 'Wightman' solely by his surname, which many people will recognise as a quasi-bullying **public school and establishment trait where the intention is to communicate disrespect**. It is anything but collegiate.

She also repeatedly portrays him as if he is **inadequate, unprepared, and almost subservient**. She describes him repeatedly as 'nodding' in agreement with her own positions. She claims he did not know things that in fact he did. She thinks *"he had little knowledge of the independent sector"*, when in fact what she describes are merely viewpoints different to her own (some examples of which she quotes ironically are factually inaccurate). She dismisses his distinct viewpoints with the undeserved sleight that *"I don't think he had thought through this point"*. She

implies he is hapless, and *"fishing for help"*. She repeatedly suggests he is exasperated and wearied by the burden our complaint, which we understand is far from the case.

To anyone who knows Mr Wightman this **demeaning portrayal** is grossly inappropriate. Yet it may have its intended effect, both in suggesting to her allies at the school that she is their dependable conduit and representative who can hold off any challenge from less able adversaries in parliament, and also in communicating indirectly to others (including the Registrar, to whom this was later copied) that our complaints is baseless and merely irksome to all who encounter it.

We do not believe this is treating her fellow MSP with courtesy or respect. As the opposite, her communications are in our view incompatible with Ms Smith's Code of Conduct.

5. Prejudice, hostility, persecution, & unilateral access

> *In addition, members should consider whether a meeting with one group which is making representations on an issue should be balanced by offering another group with different views an opportunity to make representation.*
> CODE OF CONDUCT FOR MEMBERS OF THE SCOTTISH PARLIAMENT: 5.6

We believe Ms Smith has grossly failed in what we believe to be the implicit duty of her public office to at least **listen to both sides** of an issue. And when that issue relates to concerns about **child abuse**, we believe this also becomes an ethical issue, a moral issue, and a test of character.

As outlined above, in our approach to Ms Smith on 6 January 2017, we held out an olive branch, offering to meet her to help brief her on our case. At the time we were entirely unaware that she was already extensively aware of, and actively engaged in helping to deflect, our allegations of a conspiracy to cover up institutional child abuse at the school. We did so on a goodwill basis, in the honest belief this could help protect her from being unwittingly compromised, , and might also be in the interests of both the school body (including its children) and of Parliament:

> *However, should you feel motivated as a school governor to open-mindedly explore our experience and perspectives with a view to helping positively to resolve these regrettable circumstances, we would be happy to extend our goodwill to brief you privately.*

Her response (drafted with the help of the school's lawyers) killed this possibility stone dead. At the time we regarded this as a regrettably lost opportunity, and moved on.

Only later did we discover that our perception at that time that Ms Smith was merely 'another' governor was grossly inaccurate. From multiple sources we discovered that beyond the two governors we had been led to believe were exclusively dealing with us and our sensitive data and complaint, Ms Smith was by far the next **most involved governor** in discussing our case. We found that since at least within days of our main complaint in June 2016, it appears she was closely immersed in our case, centrally and **actively helping the school to deflect our concerns**, seemingly defending her own vested interests while loyally taking the side of the school as her confidants and lobbyists.

Ms Smith's communications seem to us to show antipathy towards us from early on. When we first learned of her apparent involvement and bias, initially we assumed that this was simply because her views were solely informed by partial and **misleading disinformation** being circulated by the school.[4] But we later realised the 'excuse' of being misinformed about us was

[4] A key example is that their position substantially rests on the school **untruthfully** advising their body of governors (and the Registrar) that we "withheld" our complaint dossier from their 'investigator'. In fact we insisted our evidence should be fully investigated on the detailed **terms the governors promised** at our formal complaint meeting with them; we only refused to assist the governors in their wish to flout their

only part of the story. Ms Smith in fact appeared also to have a powerful personal vested interest in undermining our case (see below).

Communications between Ms Smith and her fellow governors appear to us to betray significant levels of **malice towards us**, including notable assaults on our characters. She was apparently prejudiced against our case from early on, so that for example on 21 August 2016 (1803h) she wrote referring to our inaccurately alleged 'withholding' outlined above:

> *it is actually quite helpful that they are being so unco-operative as it will merely flag up ... how unreasonable they are.*

In the months before we approached her, we later learned she had already described us as *"difficult"* and *"ridiculous"*, and dismissed our case as *"bizarre"* and *"unnecessary"*, such as in that same message saying:

> *The [parents], as well as causing everyone lots of unnecessary trouble, especially you and [the second openly involved governor], are also making themselves look more ridiculous.*

Jointly and severally as a body, while failing entirely to address the substance of our sincere and well-evidenced complaints, we feel the governors have sought to intimidate us, threaten us, discredit us, harm us, and (in the chilling words of the ex-Chair) *"silence"* us. Bearing in mind they (including Ms Smith) may be jointly and severally liable for school policies and Board decisions, these actions by the school and/or its governors and/or proprietors appear to have included:

- victim-blaming our child;
- constructively expelling our family;
- flouting the confidential complaint handling we asked for;
- assassinating our characters;
- researching our personal histories;
- disparaging our motives;
- threatening potentially ruinous legal action;
- initiating legal action, after searching for any feasible pretext;
- privately discussing our case with our legal firm, without our knowledge;
- openly hoping that use of the law on the Board's behoof might 'silence' us;
- generating inaccurate rumours of a court ruling against us;
- celebrating "forcing" us to employ expensive lawyers to defend our interests;
- knowingly jeopardizing our children attending any local private school;
- seeking to humiliatingly evict our family from 3rd party swimming lessons within school grounds;
- lodging repeated complaints to the professional body of one of us (rejected).

Ms Smith was by no means a minor player in this. She seems, indeed, to have been a core protagonist in advocating the use of legal action against us as part of what feels to us a **campaign of intimidation and vilification.** She was active in extensive discussions and meetings between the governors (**including Ms Smith**) that were taking place unbeknown to us around just this period, exploring ways to contrive to force us into court, which we feel the records suggest was largely with the intention of intimidating and silencing us. For example on 8 January 2016

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undertakings to us such as asking for an editable version to share directly and prematurely with the key accused.

(1516h), just two days after we have written to her as an MSP on parliamentary business of national significance, and two days before she replied to us from her parliamentary address using a wording vetted by the school's lawyers, Ms Smith advised the ex-Chair of governors handling our complaint that **in her view they should take legal action against us**:

> *I think an interdict is the only way forward for the school.*

She reiterated this in another message to the ex-Chair the next day (9 January 2017 1202h):

> *I will not be surprised if legal action will eventually be necessary.*

The facts we cite are well supported by evidence, and from the outset we have endeavoured rigorously and always explicitly to recognise uncertainties and identify our interpretations as honest opinion. Any errors or inaccuracies we have made (as a consequence of information the school has withheld) we have willingly retracted, with apologies where appropriate. However, we are aware that our adversaries have deep pockets and are unusually well connected in the legal world. So we have preferred not to engage them in litigation, at least until we can reliably outflank their disproportionate advantages in that arena.

Ms Smith's actions were indeed **instrumental** in a sequence of events whereby a school representative took legal action against us, to our **significant cost** in obtaining legal advice. Our strictly confidential message of 6 January that Ms Smith shared against our express wishes was cited as a **key document in the writ** (which we ultimately settled through a voluntary undertaking not to make three statements, with no court judgment or order being made).

Ms Smith was also one of the few school governors who **opposed and we believe effectively blocked mediation**. Various other governors were proposing that the school should explore this option with us. Indeed some of them had apparently been led to believe that the school had already either suggested, or even engaged in mediation with us, when it never had. On the contrary, **we had on two previous occasions requested mediation**, with the school refusing each time. But before even replying to us as a parliamentarian, Ms Smith privately supported the ex-Chair's own position that there was no point in mediation as there was nothing the school would compromise on, contributing her own view (9 January 2017 1202h) that:

> *I don't think mediation will have any effect at all even if it is accepted.*

In fact, her involvement in what we strongly believe to be the improper deflection of our complaints went much further. She participated extensively in the selection of what was in our view a **highly inappropriate 'investigator'** that the school presented to us and to the Registrar as an independent enquiry into our allegations, when in fact it was a brief written by and for their lawyers to construct a legal defence for the school's benefit.

We believe Ms Smith to have known that the very basis of this 'enquiry' into our allegations was bogus, and at the time of her writing to us to have more than sufficient information in her possession to use due diligence to establish that our concerns were therefore never in fact investigated or addressed by the school at all. It is still the case that **not one of our actual complaints has yet been investigated** by anyone, two years after the events that precipitated them. Yet in her role with key responsibility for children's welfare at the school, she appears neither to have challenged that, nor to have engaged directly with our **child abuse concerns**. Instead, it appears, she did all she could to ensure they were swept under the carpet.

In these circumstances, we appreciate that our approaching her in her role as an MSP may have been ethically and even emotionally challenging. But since we were clearly stating that we wished to brief her independently, and that we had solid evidence showing that institutional child abuse had been happening on her watch, we cannot comprehend her decision **not even to listen** impartially to our case. The contrived legalistic justification she gave for her stance in our view in our view holds no water.

These appear to us not the actions of a disinterested public servant, but of an undeclared **hostile agent** misusing her public office in the **financial and strategic interests** of an aggressively competitive private organization. It was, we believe, purely her volitional **choice to act in her role as an MSP for one side only**, without even taking the opportunity on offer to inform herself as to the other side's actual position. We consider this deeply unethical, flouting the 'balance' her Code of Conduct recommends. We feel Ms Smith abused our trust and her office while we believe fully aware of the potentially grave consequences of her actions both for us personally and for the public-spirited cause we have been pursuing.

6. Preferential access to lobbyists

> *The public must be assured that no person or organisation will gain better access to, or treatment by, any member as a result of employing a commercial lobbyist either as a representative or to provide strategic advice. In particular a member should not offer or accord preferential access or treatment to commercial lobbyists or their employers. Nor should commercial lobbyists or their employers be given to understand that preferential access or treatment might be forthcoming from an MSP.*
> CODE OF CONDUCT FOR MEMBERS OF THE SCOTTISH PARLIAMENT: 5.3

This entire complaint (as well as further documents not included) is rich in evidence that we believe show that Ms Smith repeatedly gave preferential access and preferential treatment to the **school and its representatives as lobbyists**. She did so either directly through the persons of its governors, proprietors, or other representatives, or indirectly through the persons of its legal advisers or commercial lobbyists such as John Edward of the Scottish Council for Independent Schools, which functions in this context largely as a lobbying organization on behalf of its private members, and so to which she was in effect a subscriber. Indeed we feel Ms Smith did so to an extent that she in practice acted as their lobbyist herself.

One example comes from her decision to move discussion of our approach to her as an MSP into private email, as outlined above. It might reasonably be expected that Ms Smith would be aware that doing this could raise ethical issues, and could conflict with her Code of Conduct.

We understand that if MSPs are *"uncertain about how the rules apply, they can ask the Standards Clerks for advice"*. But we have seen no indication that Ms Smith did in fact approach the Standards Clarks for advice in this case. Instead it seems, when writing to the school's Chair on 8 January (asking for help with drafting her reply to us) she **asked for the school's solicitors to advise** whether she should respond to us via her personal or her parliamentary email:

> *Could you ask [school lawyers] whether they think I should reply on my personal email.*

When an MSP appears to be turning to her **lobbyists' legal advisers for procedural advice in preference to Parliament's own Standards Clerks**, it seems to us a reliable sign that something is deeply wrong. This appears to us very clear evidence that Ms Smith's primary loyalties lay outside Parliament, with private interests in mind rather than doing the job for which the public pays her, namely to act in the public interest. We believe this is not compatible with her Code of Conduct. Four days passed between our writing to Ms Smith on 6 January 2017 (1200h) and her reply to us on 10 January. In fact she drafted her response within a few hours. The delay can be attributed to her decision to send a message (6 January 1747h) seeking **approval and possible revisions** of her draft response from the school's Chair of Governors (whom we believe absolutely meet the relevant definition of 'lobbyists'[5]) and through him from the school's lawyers, via their now ex-Chair of Governors:

[5] If there is any dispute over whether GWC meets the definition of 'lobbyist' we can provide extensive documentary evidence that the school was engaged over a period of months with efforts to influence MSPs

Would you run this past [the school lawyers]? I will not send it until next week.

The school's chair duly complied, and on 9 January 2017 (1103h) he replied to Ms Smith with their recommended amendments:

Please see [the school lawyer's] suggested reply to [Surname].

Ms Smith responds an hour later (1202h) confirming that she will send this on to us accordingly, accompanied by an unwarranted, but regrettably characteristic, personal sleight.

Many thanks. I'll send it off tomorrow after which I fully expect him to come at me.

This whole exchange bears examination. We had written sincerely to this member of the Education Committee, in strict confidence, to share our concerns about statutory failures relevant to impending parliamentary business, which had enabled institutional child abuse to take place at a school where she herself had a duty of care to protect children's welfare. We had invited her to meet with us in her role as an MSP, to responsibly brief her about facts that we feared might have been obscured from her view through her other channels.

Yet she not only shunned this opportunity for balanced, non-preferential responsible appraisal of potentially important child protection evidence. And she not only immediately forwarded this privileged parliamentary communication to our antagonists, whom we were implicitly suggesting to her were we believe responsible for complicity in an improper cover up of child abuse. She actually **invited our antagonists to help draft her parliamentary reply**, for her then to send on to us from her official address. By any standards, we feel, this is grossly unethical behaviour writ large.

7. Inappropriate parliamentary influence

> *Members should not ... provide services as a Parliamentary strategist, adviser or consultant, for example, advising on Parliamentary affairs or on how to influence the Parliament and its members.*
> CODE OF CONDUCT FOR MEMBERS OF THE SCOTTISH PARLIAMENT: 5.7

Our engagement with MSPs has been specifically, and only, with respect to helping to precipitate improvements to child protection in Scotland (particularly for children at independent schools) **at a political level**. We have never asked our MSP to intervene directly with the school, its representatives, or any other agency on our behalf with respect to our complaints about the school. And our approaches to other MSPs were solely on the same basis, largely with regard to the government's anti-bullying consultation.

We believe that Ms Smith's correspondence reveals a general approach of her acting on the school's behalf to **thwart our efforts to pursue child protection issues** (arising from our particular complaints against the school) **in parliament**. A striking example comes in the new Chair of the school's governors' quick reply (1423h) to her message of 19 January 2017 (1412h) detailing her 'off the record' conversation with our MSP:

Thanks Liz - noted and understood. Do we take from this that the [legal] letter on Monday has had no effect?

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and parliamentary committees with respect to the issues we were presenting, both directly and via lobbying organizations such as SCIS (Scottish Council of Independent Schools).

This begs the question what possible 'effect' the school governors as a body had been hoping their solicitor's legal letter on behalf of the school[6] would have. Since this was in direct response to discussion of our relationship to our MSP, we can see no credible interpretation other than that their aspiration was that this legal (and therefore financial and social) threat to our family might **intimidate us** to **abandon** our **parliamentary** lobbying for more effective protections for children at independent schools in Scotland. We have multiple further messages which show both discussion amongst the governors of how the law might be used to deflect our capacity to pursue our complaints, and also their approbation of the ex-Chair's claimed 'success' in obtaining from us an undertaking (which he falsely implied was a court judgment) and his apparently overt hope that this might finally 'silence' us.

Ms Smith is accountable for this apparent effort to influence the parliamentary process by use of legal intimidation in two different ways. Firstly, she was herself a school governor and therefore apparently a client of the lawyer who sent it, and was jointly and severally responsible for all the governing board's positions (including an unminuted, but subsequently discussed, group decision on 6 January to pursue court action against us, as well as her own separate advocacy of such an approach). And secondly, she was the recipient of the particular message above, which appears to us to make the Chair's specific hope to 'silence' us clear. Far from protesting that the Chair's apparent wish to stop our participation in the democratic process might be inappropriate, within minutes (1428h) she replied again to advise him that strategically their approach might have been counterproductive:

> *Or the reverse, that it has had an effect and he has been pushing Wightman to find out more?*

We believe Ms Smith was a fully informed and active participant in the school's apparent efforts to **deter us** from further **civic campaigning** for improvements to **child protection**. As such we believe she failed in one of her first duties as an MSP, namely to put public interests before her own private interests. We feel this is just what the Code of Conduct warned against.

Ms Smith seems to have been very active in providing services to the school as a **parliamentary strategist and advisor**. For example, on 19 January 2017 (1430h) the school Principal suggested to her (in reply to her reporting her 'off the record' discussion with our own MSP about us in parliament) that he himself might intervene with Mr Wightman to better 'inform' him — or we believe in other words, **to influence his relationship with us as our MSP**:

> *Would it help if I offered to speak to him following up his enquiry of me last Spring - I could take him through our procedures in order to inform him about the Independent sector generally but in so doing hopefully help him to put them into context.*

She replies informing the Principal that the Director of SCIS had told her (in fact just that minute, 1430h, as part of the same thread titled 'Andy Wightman') that he was soon giving evidence to the Equalities & Human Rights Committee (on the very topic in which we were interested). The SCIS Director, John Edward, had done so in the following terms, emphasising his unqualified support for the school's position, and also close relationships at the committee:

> *I am giving evidence to the Parliament Equalities Committee next Thursday on anti-bullying policies and will be clear how seriously schools take this. ADES, the Inspectorate part of ES and the Catholic Education Service are on with me. There is no-one from AW's party on the Committee, although I know the Convenor and Deputy quite well.*

Ms Smith's response to the school's Principal seems to us **unmistakably strategic advice**, clearly intended to advice on how to maximise the school's direct and indirect (through SCIS) **influence on the Parliamentary process**. We believe her view may have **materially affected**

[6] We remain uncertain exactly who was formally issuing this threat to us, as the lawyer referred only to their 'client' without identifying who that was, and failed to answer when we asked for clarity.

the views of a witness. She replies to the Principal (copying her reply to the new Chair and ex-Chair) recommending:

> *It might at some stage but I suspect we should leave it be just now not least because of the fact John [SCIS Director] says he is giving evidence about anti-bullying policies at the equal opportunities committee in parliament so best to wait till that is over.*

A few weeks later (11 February 2017 1353h) Ms Smith (apparently) spontaneously reprised this discussion, recommending to the ex-Chair that the school delays any attempt to intervene directly with our MSP. The basis of her suggestion appears to be that it would be against the school's interest for our elected representative to be able directly to inform himself about our case, even if the school could largely obstruct this, which again seems a prima facie case of Ms Smith siding with her private interest to the detriment of the possible Parliamentary and public interest. And she seems concerned we might 'misinterpret' any 'formal' (i.e. transparent) approach:

> *I think I would hold off seeing Andy Wightman meantime as I think it might just precipitate him trying to ask lots of other questions about the actual enquiry. Whilst you could stonewall all of that I think it could be misinterpreted if we approached Wightman formally. He would almost certainly tell [Surname] that you were meeting him which he would no doubt misinterpret.*

Instead Ms Smith offers to solicit further information from our MSP on the school's behalf. Extraordinarily, she also proposes that she might float the idea of a **secret meeting** between our MSP and the school, apparently with the hope of covertly winning our MSP over to their side of the argument, and therefore away from us:

> *If I happen to see Andy casually I'll see if he says anything more to me. If he does I could flag up that the school would be prepared to see him confidentially if he felt that was helpful.*

The school's ex-Chair clearly regards Ms Smith as his *adviser* on dealing with our Parliamentarian. In his reply a few hours later (1849h) he names her contribution as exactly that (while naming our MSP less accurately):

> *I will follow your advice on Andy Whiteman.*

To show that these were by no means the first examples of Ms Smith's habit of indulging the school with her 'inside track', the previous year (12 November 2016 0824h) she had also apparently offered to assist the school strategically by acting as their direct conduit into government. Significantly, we feel, this does not appear to be reporting legislation that has been enacted, but government policy in development:

> *[The Principal and Proprietor] seemed happy and I will give some background on where the government is if necessary. It is actually quite helpful that the government is in a muddle.*

We find it hard to interpret this except as Ms Smith's willing intention to provide services as a Parliamentary strategist, adviser or consultant, advising on Parliamentary affairs or on how to influence the Parliament and its members. This appears to us clearly incompatible with her Code of Conduct.

8. Covert use of private email

> *MSPs must respect individual privacy when representing constituents' interests.*
> CODE OF CONDUCT FOR MEMBERS OF THE SCOTTISH PARLIAMENT: 8.7

We contacted Ms Smith in her role as an MSP, with regard to her role on the Education & Skills committee, in view of our primary interest at that time to engage with parliament's anti-bullying consultation. However, the documentary record clearly shows that she responded **primarily** in the **interests** of that **private organisation** and their lobbyists and not with respect to her duties as an MSP and paid public servant.

As the communications timeline shows, one of Ms Smith's first acts (8 January 2017 1517h) with, we believe, clear intent to breach her Code of Conduct, appears to have been to transfer discussions to the ex-Chair about our correspondence to her private email systems, where she may have believed her messages would not be subject to transparency.

> *Can you use my [redacted] email in case. Could you ask [school lawyers] whether they think I should reply on my personal email.*

This begs the question *"in case"* of what? We can see only one, obvious, answer, which is that it would be 'in case' her circulation of our confidential parliamentary correspondence came to light — even, perhaps, if seen by her own staff, who might notice and question the propriety of her actions. This appears to us to suggest that Ms Smith was clearly aware that her actions could at least potentially be construed as improper.

Ms Smith also subsequently, we understand, surreptitiously put our correspondence with her into the deleted folder of her parliamentary systems. We wrote to her as an MSP, specifically as a member of the Education & Skills Committee. So we believe this deletion was improper, and intended to obscure our correspondence from being noticed. It is notable that Ms Smith seems to us to 'protest too much' in providing her own quite untenable reasoning for her use of private email:

> *I transferred these emails to my private email account in order to minimise any risk of my staff who have access to my parliamentary account being able to view any confidential information. In particular, I was anxious that the email sent to me by [Father] on 6th January 2917* [sic] *which contained the link to the highly confidential information about the case, including the names of some staff and pupils, should not be read by anyone but me.*

This explanation would make no sense even on the face of it, as we presume parliamentary staff are routinely exposed to highly personal and confidential matters and are subject to their own conditions of confidentiality as part of their contract of employment. But its apparent dishonesty is starkly demonstrated by the fact that Ms Smith had in reality almost instantly shared the key message and our data we wished her to respect as private and privileged **beyond Parliament to our adversaries** as the very people we most wished it not to reach. We believe this fact destroys that supposed alibi. Her protestations seem to us nothing but another effort deliberately to deceive. And we believe that Ms Smith's apparent intention to deal covertly with the school as lobbyists, while also serving her own private vested interests, betrayed our trust as concerned members of the public, and deeply discredits the Parliament.

In addition to being a breach of our confidence, and an apparently intentional breach of her Code of Conduct, we believe Ms Smith's action in sharing our data via her private email systems is likely to be an unlawful breach of her obligations to handle our sensitive personal information (that we sent to her in strict confidence as a parliamentarian at her official address) with appropriate regard for our privacy under the Data Protection Act. She should be held accountable for this.

9. Acting in Conflict of Interest

> *A member shall not by any means... advocate or initiate any cause or matter on behalf of any person.*
> CODE OF CONDUCT FOR MEMBERS OF THE SCOTTISH PARLIAMENT: 4.1

Ms Smith was in fact quite flagrant about her willingness to use her parliamentary office and privileges, and therefore public trust, for the advantage of her own interests. On her profile on the school's own web site she openly proclaimed her intention to use her

> *educational responsibilities as an MSP in order to support [the school].*

It is our understanding that declaring an interest on the Members' Register does not give MSPs *carte blanche* then to behave as their advocates and agents in Parliament. But we believe Ms Smith's actions do in fact show that, just as the wording above powerfully suggests, she placed her allegiance to serving the vested interests of this private body *above* her duties to Parliament, or to the public. It appears to us that Ms Smith has been, in a very real sense, performing as the school's willing agent in Parliament, acting in their private interests. This has come to light only after enormous perseverance and time-commitment on our part, so may not be the first occasion on which she will have acted this way. And there is little reason to suppose that this would end now that her position as a school governor has apparently formally come to an end. And we understand that Ms Smith continued to interact with the school with respect to this after we believe her tenure as governor ended.

Perhaps the clearest example of Ms Smith's inappropriate actions on behoof of her private interests came in the days after we first approached her (as an MSP and member of the Education & Skills Committee). It seems to us she had two reasonable options available to her at that moment:

1. send it straight back to us (and/or destroy her copy of our data) apologising that she was too conflicted to be at all involved ;
2. explain to us her extensive prior involvement in our case, while offering to listen to our side of the story anyway and while undertaking to endeavour to remain impartial and respect our confidence, giving us the opportunity to make an informed judgment whether to proceed with her;
3. taken her parliamentary responsibilities seriously, perhaps even resigning as a school governor, and single-mindedly have pursued her duties as a public servant.

Instead she did none. Firstly, Ms Smith **failed to reveal that her conflict of interest in our case went far beyond her publicly declared interest** as a *"member of the board of governors of [the school]"* in a context where she would have known that we had been led to believe that discussion of our case had been restricted to two other named governors. She failed to reveal that she was in fact a **core protagonist in the school's efforts to silence us**, including in parliament.

Then Ms Smith immediately proceeded to take **demonstrable actions** of **acting in conflict with our interests** in the terms on which we had approached her as an MSP and member of the Education & Skills committee. She proactively conspired with that very body in favour of the interests of the large and powerful private institution to which she apparently considered herself to owe a greater loyalty. And she directly misled us to believe that our request for confidentiality had been respected.

We suggest that with a complaint like ours against this school, Ms Smith's duty to the public as an MSP was inevitably in direct conflict with her interests as a governor there. She might reasonably have felt our presenting her with our confidential information put her in an invidious position. And it is understandable that her opportunity to access our privileged data might seem so

valuable to the school that it would be hard to resist the temptation to divulge it. But she should have had the **ethical integrity** and professionalism to resist that temptation. By immediately secretly running to our opponents with our private information, and indeed actively urging them to prosecute us without ever having taken the trouble impartially to listen directly to our case as we offered, we believe she dismally failed to perform to what we feel would be the most basic standards of proper parliamentary conduct.

It seems clear to us that Ms Smith's motive was to help the organization, to which she had a declared parliamentary interest that we feel was in reality a privately prime loyalty, improperly to deflect legitimate and important scrutiny about the root causes of a child's injuries (and more). And by doing so surreptitiously while dishonestly pretending to us that our information was secure, she was participating in what we believe can only be described (for many reasons) as a **conspiracy to cover up** what we were suggesting was the truth in the context of our accusations of **institutional child abuse**. To do so by intentional misuse of her public office as a parliamentarian is not acceptable.

10. Vested interest

> *A member should not, in relation to contact with any person or organization who lobbies, act in any way which could discredit the Parliament.*
> CODE OF CONDUCT FOR MEMBERS OF THE SCOTTISH PARLIAMENT: 5.2

Perhaps most troubling of all is that we believe Ms Smith's actions in what we consider a truly disgraceful episode may, we believe, have been conditioned not only by a conflict of interest in terms of her loyalty to third parties, but also by a vested interest in **protecting her own position** as an MSP, her party's Education spokesperson, and a member of the Education & Skills Committee. We believe she failed to be transparent with us; betrayed our confidentiality; covertly conspired to threaten and intimidate us; assisted in the improper obstruction and deflection of our legitimate child welfare complaints at the school; and maneuvered to disempower our capacity to contribute to democratic decision making in Parliament partly due to a significant **personal interest** in scuppering our efforts to pursue our valid (and now validated) child abuse concerns.

Ms Smith appears to us to have been aware from early on about her own possible exposure to serious personal and professional embarrassment. This derived largely from chairing the school's Education sub-committee, where (though recently formally criticized for having no clear purpose) we believe **primary responsibility for the school's welfare policies** could reasonably be considered to have lain. We have been led to understand that pending any formal ruling against them (as has now in effect occurred) the governors might reasonably have reckoned they could largely neutralise any enquiries by trivialising or dismissing our concerns, or else by stating their inability to comment due to 'ongoing investigations' of allegations.

But if a major complaint about child protection failures at the school was upheld, and perhaps even reached the media, her **personal culpability for that failure** could seriously damage the **Shadow Education Spokesperson's** reputation. Her potential nervousness in this regard would not have been helped by the school Principal's apparently having described their own policies as *'not fit for purpose'*, while laying the blame for this at the governors' door.

The then school Chair had been first to record Ms Smith's potential vulnerability in terms of political exposure or professional reputation (apparently reporting his co-complaint-handling governor's concerns), a few days after we lodged our major complaint. On 11 July 2016 (2316h) he wrote to her:

> *[The second Governor formally handling the child abuse complaint] is concerned that as Shadow Education spokesperson you should **consider carefully your own position**. If the*

press get a hold of the story you could be in the "firing line"... This is not going to go away. [The Principal and Proprietor] does not seem to appreciate the seriousness of the situation.

A few hours later 12 July 2016 Ms Smith replied, first (0542h) to the ex-Chair:

With reference to me, I am entirely comfortable about the way the school has operated to handle the process with governors... Where the problem could come is if the MSP wishes to brief the press who will know that I am a member of governing council but I still don't think it would be a major story about my actions- only that I am a governor at "a bullying school" which is how the tabloids would run it (probably irrespective of the outcome of the case!).

Then presently (0935h) she responded similarly to the other governor, who had first raised the concern about her political position. She observes that her parliamentary position should be secure as long as our case is not successfully vindicated (as we feel that to all intents and purposes it has now been):

I was sorry to hear from [the Chair of Governors] a little more about the problems the school is facing because of the alleged child abuse situation. [The Chair of Governors] mentioned the point you had raised about my position on the governing council and I assumed you raised that (rightly) in the context only of the case being proven?

Two days later later (14 July 2016 0537h) Ms Smith reiterates to the Chair her view that her position is secure as long as we do not prevail:

I didn't call [the second Governor] as he had given me email confirmation that his views were the same as mine (re my own position) - ie the issue only arises if the [Surname]s win their case.

This latter comment crystalises her position. She believes there is **no threat** to her position **as long as** our case remains **unproven**. But she recognises that there could be significant negative consequences for her personally if our allegations of child abuse were found to be true. The logic is inescapable. It seems it was in **Ms Smith's** personal, political, professional (and therefore financial) **interests** that our complaints of institutional child abuse did **not prevail**.

We believe the record shows that Ms Smith was very aware of this. It seems to us she was actively and centrally but covertly engaged in the school's efforts to obstruct our complaints, from early in the process. She appears to us to have already been a core protagonist, collaborating mostly with just the two other governors we knew about, and it appears **with a personal motive to deflect our case**, for half a year before we first contacted her.

It must therefore have come as some relief (some weeks before we approached her) when the document their lawyers' commissioned "in contemplation of litigation" to aid their defence mostly gave at least their written policies the all-clear (based on briefings by the school's leadership and a desktop policy review). And after similarly reviewing just the school's own selective version of our child's treatment, Ms Smith immediately wrote (12 November 2016 0824h) to the ex-Chair:

I read the report last night and whilst there are things to do... I was quite pleased with it as I think it vindicates the school in terms of having a satisfactory set of policies... it is rather at odds with [the Principal and Proprietor] when he told you our protection policies were "not fit for purpose" so I hope this calms him down!

Her interestedness would of course be only theoretical if Ms Smith had fully observed all the terms of her Code of Conduct. Had she respected our confidentiality; and disclosed her close involvement in our case when we approached her; and kept principled separation between her

parliamentary responsibilities and the forms her support for the school took, there might have been no real concern.

But in our view Ms Smith appears to have done quite the reverse. At every turn she appears to us to have acted enthusiastically to undermine our capacities to pursue our very real child protection concerns, while maintaining a **surface impression of uninvolvement**. In the school's communications, as well as her own parliamentary communications with us, her central presence as what seems to us an invisible presence from early in our complaint process was undetectable to us until we obtained revelatory documentation through the Registrar's process. Indeed, we suspect **even the second governor** formally handling our complaint may have been largely unaware of her close involvement, as he appears seldom to have been copied into her exchanges with the ex-Chair or new Chair. This raises many unanswered questions.

The many ways in which Ms Smith appears to have been actively engaged in advising and assisting the school to obstruct and deflect our quest for a proper investigation into our comprehensively evidenced complaints of child abuse (which remain uninvestigated by either the school or its contractor, after two years) are detailed above, and littered throughout this present document. That she seems to have done all this as an MSP, using access and information gained through her office, while apparently betraying the responsibilities of her position to serve the public interest, are a disgrace. That this significantly contributed in our view to what we believe to be a widespread cover up of institutional child abuse is we feel truly scandalous.

We believe our evidence compellingly shows Ms Smith to be an unfit individual to be entrusted with public office of any kind. We request a full investigation into this grievous and intentional abuse of public office and public trust, and ask that Ms Smith be formally suspended from any official committee or other duties pending its conclusions, which we hope and trust will result in her being sanctioned in the strongest available manner. If Ms Smith resigns voluntarily as we believe she should, this should not allow her to escape public sanction. We believe that Ms Smith should never again be allowed to hold any public position with privileged access to information.

Corroboration

We felt it inappropriate to attach sensitive personal documents to this initial message. We have sought always to distinguish facts from our honest and truthful interpretations. We can of course support all factual claims and references with documentary evidence. We will make this available as appropriate.

Privacy

This complaint relates to an institutional child abuse complaint, and the child/ren affected have a statutory right to privacy. All recipients of this information should take care not to identify the family concerned, or enable their identification, in any discussions.

Stuart Scott

From: [redacted]
Sent: 21 December 2017 16:48
To: investigations@ethicalstandards.org.uk
Subject: Re: Complaint reference MSP/2083/17-18-14
Attachments: Respect for All important submission to antibullying consultation.pdf

Dear Mr Thomson,

Thank you for your letter of 14 December 2017. To answer your request, we would highlight the entire document of around 35,000 words described as the "Addendum" that Ms Smith forwarded. This was specifically marked as STRICTLY CONFIDENTIAL on its cover and as CONFIDENTIAL at the foot of every page. And there were unique version control measures on the front page and at the foot of every page indicating the version and recipient/s. This document was itself highly sensitive, and we did not provide it directly to the school or Governors at any time and nor did the documents ever lose their confidential status.

We sent a *previous* version of the Addendum to the Registrar of Independent Schools in December 2016 (around 6 months after we produced the first main 225k word 'Dossier') to aid her investigation into our complaint about the school. With our agreement she sent this, on 15 December 2016. to Mr Alan Hartley, the Governor who we had been told would handle our complaint in complete confidence together with just one other named Governor (Mr Stewart) and also to James Mills, the school Bursar. We did not give Alan Hartley or James Mills permission to share either the complaint Dossier or Appendix with Ms Smith.

We never gave permission for Ms Smith to share this data we sent her with the school or governors. And we had a reasonable expectation of confidentiality, especially as we explicitly asked for that, and also given her status as an MSP. When we sent our data to Ms Smith on 6 January 2017 we firmly understood that she would not have seen this before (nor the main original Dossier) as to our knowledge (under the terms of undertakings by the school) she was not involved in any way in the handling of our complaint. It was just coincidental that the same day that Alan Hartley via James Mills chose to share their *different* versions of these documents with their governors including Ms Smith (but note NOT Melvyn Roffe) apparently on their lawyer's advice on the grounds that it was now being more widely circulated anyway (although we had never given our consent for any wider sharing of our personal data, and the limited further circulation that had occurred was of the school's own making, with their lawyer's collaboration). Please note that we have since sent the lawyers, the school, the Governing Council of GWC and their Proprietors a Cease & Desist letter to preven further sharing, and we are protesting this prima facie serious breach of the Data Protection Act with the school's law firm, in preparation for probable formal complaints about their firm and partner to the Scottish Law Complaints Commission and also to the ICO. It is also notable that this separate improper) sharing was so close in time that Ms Smith would have had no time to read the material to compare or assess before she immediately breached our confidentiality by forwarding it.

When Ms Smith shared our confidential data she did so not just to Alan Hartley, but also to Melvyn Roffe, the school's Principal. Mr Roffe was (and remains) the subject of multiple key complaints by us, so for that reason we had intentionally bypassed him in submitting our main complaint Dossier directly to the School's two nominated governors in June 2016. We had also specifically refused consent for the governors handling our complaint to share our data with him prior to any impartial investigation. We considered any such advance sharing of allegations and evidence inappropriate and potentialy corrupting. We expected the sharing of any necessary elements of the complaint to be done by agreement with an independent investigator after a meeting with ourselves, as specifically agreed with the two previously mentioned governors as part of a negotiated process, which they later reneged on. But we had never given our consent for our personal data or our complaint/s to be shared with him either in whole or in part. By sharing our both the 250k word dossier and the 35k word addendum with Mr Roffe, we believe Ms Smith knowingly or at least recklessly undermined the school's formal complaint process, as well as we believe any subsequent GTCS or other regulatory investigation.

The link to these two confidential documents was contained within our covering letter which we sent to Ms Smith on 6 January 2016. We had a reasonable right to expect it to be treated confidentially. And she in fact put in writing that she would respect our confidentiality. No one else received that same covering letter. And only the other MSPs sitting on the Education and Skills Committee received a similar letter.

Quite apart from Ms Smith's formal breaches of confidentiality, which we feel are compelling and serious, we suggest our evidence clearly demonstrates her ***intention*** to behave unethically. Within minutes of receiving this highly confidential communication from us, she forwarded to Alan Hartley and Melvyn Roffe three items:

1. The MSPs' version of the confidential June 2016 **dossier** we sent her, that (a) she should not otherwise have had a copy of (b) was distinct from the version previously shared in confidence with two named governors; and (c) which she had no time to cross-reference;

2. The recent December 2016 **Addendum** which (a) we had not shared directly with the school at all; (b) she should not otherwise have had a copy of (c) was distinct from the version indirectly shared with our permission with Alan Hartley and James Mills via the Registrar; and (d) which she had no time to cross-reference;

3. The **covering letter** to her, which (a) contained information intended only for MSPs eyes; and (b) contained exclusive information intended only for her in her role as an MSP, and which we absolutely did not wish to be shared with the school.

Ms Smith clearly didn't fully read (and had no time to read) either of the substantial documents prior to forwarding them within minutes to Alan Hartley and Melvyn Roffe. But a cursory glance at the documents, which we believe she would have at least done prior to forwarding, would have revealed their separate versioning. So regardless of the actual data differences, we suggest her actions do not just suggest intent, but compellingly establish intent. If she had believed the school was already in possession of the information in question she would have had *no need to forward it*. The act of her going out of her way immediately to share our explicitly confidential data proves, in our view, that she believed it contained unique and different information that would be of benefit to the school (and against our interests).

Finally, we would also note that we have submitted to you a substantial range of formal complaints. We understand that you say some of these are outwith your remit. But many still seem to fall within your remit, and the status of our confidential data seems relevant only to some of these. We do not understand why you appear to be suggesting that you might have rejected our entire complaint had we been unable to satisfy your request for evidence of unique confidential information we provided to Ms Smith as distinct from to the two Governors of George Watson's College who were handling our complaint, as we believe we have now done. We would be grateful if you could clarify this for us.

We attach for your reference a PDF copy of the covering letter we sent to Ms Smith MSP on 6 January 2017 as a sitting member of the Education and Skills Committee.

We trust this now provides the information you require and satisfies your requirements. If you feel it does not, we would ask please for a clear legal basis for your position.

Yours sincerely

[redacted]

Stuart Scott

From: [redacted]
Sent: 01 February 2018 15:44
To: investigations@ethicalstandards.org.uk
Subject: Re: Complaint reference MSP/2083/17-18-14

Dear Mr Thomson,

Thank you for your letter of 10 January, and your confirmation that the complaint can proceed. We apologise for our very slow response; we have recently been extraordinarily busy with other urgent parts of our wider pursuit of this child protection case.

We are happy to provide the information you request. However, we have learned that we are under a legal duty to redact certain elements. These would in no way alter the overall meaning or significance of the text but only remove small parts that we cannot legally share. We trust you will understand our constraints in this way. Please let us know if you have any concerns in this regard and we will do all we can to resolve that to your satisfaction within the law.

This operation may **realistically still take some** time. It would be our hope to forward the data to you as soon as possible. It would be helpful if you could let us know if you have any absolute deadline we would have to work towards. Our apologies again for the delay.

Yours sincerely,

[redacted]

On 30 Jan 2018, at 15:35, investigations@ethicalstandards.org.uk wrote:

[redacted]

Please see the attached document for your information.

Yours sincerely

Greta Elliott
Casework Coordinator
Commissioner for Ethical Standards in Public Life in Scotland
Thistle House
91 Haymarket Terrace
Edinburgh EH12 5HE
Tel: 0300 011 0550
www.ethicalstandards.org.uk

[redacted]

Stuart Scott

From: [redacted]
Sent: 13 February 2018 21:26
To: investigations@ethicalstandards.org.uk
Subject: Re: Complaint reference MSP/2083/17-18-14

Dear Mr Thomson,

We apologise again for the delay. We are pleased to attach the information you request in your letter of 10 January, which you should be able to download from here:
[redacted]

Please let us know if you have any difficulties with this link. This comprises:

- the 'Dossier' and 'Addendum' documents provided to Ms Smith;
- a list of other MSPs those same document versions were shared with (always in strict confidence and in the course of their parliamentary duties as a result of being a member of their committee);
- the similar but distinct documents provided to the Registrar in November/December 2016; please note that the Dossier (the same version as that given to then GWC Chair Alan Hartley on paper in June 2016) we had sent digitally to [redacted] of Education Scotland on 21st November, who forwarded it to the Registrar, so we had no need to submit this document ourselves. We sent the Registrar their version of the Addendum on 15 December. We also include the associated covering letters.

As previously advised, you will note that we have had to redact the Addendum in places. This is in keeping with a voluntary legal undertaking (but no court judgment) we made to the then Chair of Governors, regarding certain statements we had made that he found objectionable**.** We do not feel these redactions should have any bearing on your work, but if you require further information we will of course assist in any way we can.

Please also note that both these documents were originally prepared only for confidential sharing with just one or two recipients in each case, so contain a considerable amount of highly sensitive personal data. Our subsequent sharing with parliamentarians was also on explicit condition of strict confidentiality. We are providing them to you, again in strict confidence, specifically and only for internal use for the purposes of your formal investigation. We would ask you should you feel any wider circulation may be required for you to undertake your duties then please consult with us as considerable further redaction would be necessary not only to protect identies but also to remove anything that might be considered potentially defamatory.

We hope this satisfies your needs meanwhile. Please let us know if we can assist further.

Yours sincerely

[redacted]

> On 2 Feb 2018, at 14:14, investigations@ethicalstandards.org.uk wrote:
>
> Dear [redacted]
>
> Thank you for your email of 1 February.
>
> There is no statutory deadline for receipt of the information which we have requested you to supply. However, as I am sure you will appreciate, we endeavour to proceed with investigations as expediently as possible. If we did not do so, it would be unfair to those who are involved and would risk bringing the investigative process into disrepute.
>
> The original request for the information was issued on 10 January. I would request that you make it available to my office on or before 13 February, which is 6 weeks beyond the original request.
>
> Yours sincerely

Bill Thomson
Commissioner for Ethical Standards in Public Life in Scotland
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE
Telephone: 0300 011 0550
www.ethicalstandards.org.uk

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Sent: 01 February 2018 15:44
To: investigations@ethicalstandards.org.uk
Subject: Re: Complaint reference MSP/2083/17-18-14

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We are happy to provide the information you request. However, we have learned that we are under a legal duty to redact certain elements. These would in no way alter the overall meaning or significance of the text but only remove small parts that we cannot legally share. We trust you will understand our constraints in this way. Please let us know if you have any concerns in this regard and we will do all we can to resolve that to your satisfaction within the law.

This operation may **realistically still take some** time. It would be our hope to forward the data to you as soon as possible. It would be helpful if you could let us know if you have any absolute deadline we would have to work towards. Our apologies again for the delay.

Yours sincerely,

[redacted]

> On 30 Jan 2018, at 15:35, investigations@ethicalstandards.org.uk wrote:
>
> Dear [redacted]
>
> Please see the attached document for your information.
>
> Yours sincerely
>
> Greta Elliott
> Casework Coordinator
> Commissioner for Ethical Standards in Public Life in Scotland
> Thistle House
> 91 Haymarket Terrace
> Edinburgh EH12 5HE
> Tel: 0300 011 0550
> www.ethicalstandards.org.uk

[redacted]

LIZ SMITH MSP
SCOTTISH PARLIAMENT, HOLYROOD ROAD, EDINBURGH EH99 1SP

Bill Thomson
Commissioner for Ethical Standards
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

25th November 2017

Dear Mr Thomson

Thank you for your letter dated 20th November and your subsequent advice on the phone on 22nd November.

Whilst I am obviously replying to you in accordance with the theme of the complainant's allegations against me in my capacity as a member of the Scottish Parliament's Education and Skills Committee, I think it will be helpful if you have knowledge of the context of the case against the governing council and some individual members of staff at George Watson's College (where I was a governor for ten years August 2007- June 2017). This case has been running for the best part of two years and you will know that some reference to it has appeared in the press and on social media in recent weeks.

The school will be able to provide you with detailed information about the nature of the allegations made against the school and the reviews of the case already undertaken by:

Senior staff at the school
Governors at the school
An independent enquiry (requested by the school and undertaken by [redacted])
The Registrar for Independent Schools
HMIe and Scottish Ministers

It is my understanding that the complainant also referred the case to the police.

Secondly, I think it would be helpful if you sought further information from the standards clerks at the Scottish Parliament who, in the summer of this year, were asked by the complainant to release information to establish whether there was any wrongdoing on my part in my role as a member of the Education and Skills Committee and also reference to any related matter within the Equalities and Human Rights Committee (of which I am not a member). It is my understanding, from Scottish Parliament clerks, that this information showed that there was no evidence of any wrongdoing and the complainant was informed that this was the case.

Also in the summer, the complainant made a data protection subject access request of me and also a Freedom of Information request. I complied with both and I am very certain that I did so correctly. I believe this to be the case on account of the consultations I had with legal advisers to George Watson's College and Scottish Parliament standards clerks at the time. The lead officer I consulted with in the Scottish Parliament Standards team was [redacted] and I would be very happy to let you see the emails between her and me between 12th July 2017 and 2nd August 2017 assuming she also agreed to these emails being provided to you.

I would also be very happy to let you see all the material I sent to the complainant although I recognise that this would require their consent.

At no time, have I used my Parliamentary position as MSP, Shadow Cabinet Secretary for Education, Member of the Education Committee or any other role I have in Parliament to speak about this case. The official records of Parliament, both in the chamber and in committee, prove this.

It is my firm belief that had I spoken about the case or disclosed any relevant information within my parliamentary work I would have been guilty of a conflict of interest, something that is against the parliamentary code of conduct.

Likewise, I believe it would have been totally inappropriate for me to respond to the complainant about the substance of the case when the matter was being examined at the time by other authorities - a point I made clear to the complainant on 10th January 2017 (by email).

The complainant states that they had expected me to take up the case in the context of the parliamentary debate about the Scottish Government's anti-bullying policies. To do so would have been a clear conflict of interest and also potentially undermined decisions made jointly by committee members about which witnesses are called to give evidence on any aspect of parliamentary business.

I note that the complainant is alleging that I shared confidential information with my colleague Andy Wightman MSP. It is very clear from the data I provided to the complainant that it was Mr Wightman who approached me about the case because he knew I was a governor at the school not because I was an MSP. I did not approach him. There was no sharing of confidential data by either me or by Mr Wightman, nor was there any disrespect shown by me to him or him to me.

I completely reject the allegation made that I withheld any data which I was obliged to produce. Indeed, quite the reverse is true. To provide maximum transparency I provided an extensive email trail from my own private email address which, as was confirmed by the Scottish Parliament, I was not obliged to do. Several emails were sent to my parliamentary address and, in order to ensure my staff did not have access to them, I transferred them to my private email. In particular, I wanted to ensure that the very large dossier which had been sent by the complainant to my parliamentary email on 6th January 2017 (and which, at an earlier date, had been lodged with the governing council at the school and with the Registrar of Independent Schools) could not be seen by anyone who had access to my parliamentary email.

I also completely reject the allegation that I breached confidentiality by the unauthorised sharing of data in my parliamentary roles and I believe the data provided to the complainant proves this point.

Discussion about the case against the school, and the email exchanges, took place within the proper channels of the governing council at George Watson's College of which I was a member for part of the time of this case has been a live issue. I am sure the school will provide details of these discussions should you wish to access them.

At all times, I believe I upheld the strongest ethical standards both in my Parliamentary roles and in my governorship at George Watson's College.

I am very happy to provide further information should you require it.

Yours sincerely,

Liz Smith

Liz Smith MSP

LIZ SMITH MSP
SCOTTISH PARLIAMENT, HOLYROOD ROAD, EDINBURGH EH99 1SP

Bill Thomson
Commissioner for Ethical Standards
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

9th December 2017

Dear Mr Thomson

Thank you for your further letter and emails seeking clarity about the email dated 6th January 2017. May I confirm that I sent the email to Melvyn Roffe and Alan Hartley and may I also confirm that I gave very careful consideration to whether or not I should send it to them.

I did so on account of the fact that on 28th December 2016, governors at the school, including myself at the time, were advised by the school lawyers (Morton Fraser) that because the complainant's document had, by then, been lodged with other parties- including with the Registrar of Independent Schools and the Master of the Edinburgh Merchant Company - and because this document made serious allegations against the governors of George Watson's College and some members of staff, it could now be viewed and discussed by the governors. The first emails enclosed confirm this position. Secondly, as a result, I knew, beyond any doubt, that both Melvyn Roffe and Alan Hartley (as members of the governing council) had had prior sight of the document and so I was not passing on information that would be seen as confidential to them.

It was also the case that, at several governing council meetings in the autumn of 2016, we were advised by the chairman of governors –who, at the time, was regularly seeking advice from Morton Fraser - that because the school was in the middle of legal proceedings, individual governors were asked to alert the chairman of governors and Principal to any approaches made to us by the complainant.

I was exceptionally careful to send the email I received from [redacted] on 6th January 2017 only to Melvyn Roffe and Alan Hartley, both of whom I knew had sight of the document. I sent the email acting on advice and in my capacity as a governor of George Watson's College, not as an MSP.

With reference to your second enquiry, I am submitting to you the information which proves that [redacted] corresponded with me on 26th July 2017 regarding the complainant's Freedom of Information request made to both the Education and Skills Committee and the

Equalities and Human Rights Committee. I have enclosed the Parliament's response.

As indicated previously, I am very happy to release all the emails between myself and [redacted] whose advice I sought on several occasions between 12th July 2017 and 2nd August 2017, most especially about the requirements and exemptions within Data Protection Legislation.

At all times, I believe I was acting on the advice provided to me by both the Scottish Parliament and Morton Fraser.

Yours sincerely,

Liz Smith

Liz Smith

LIZ SMITH MSP
SCOTTISH PARLIAMENT, HOLYROOD ROAD, EDINBURGH EH99 1SP

Bill Thomson
Commissioner for Ethical Standards
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

12th March 2018

Dear Mr Thomson

Pleased find enclosed the documents which you requested in your letter to me of 8th March 2018:

1) The 8 email correspondences (clear folder) between me and the complainants from 6th January 2017 onwards.
2) All the emails (pink folder) from 11th July 2016 onwards which I was required to send to the complainants in August 2017 because of their subject access request. The sheets in the pink folder are the originals in which I was required to redact email addresses of governors, school legal advisers etc. These sheets were subsequently photocopied for the complainants.

You intimated that you would like information about my prior knowledge of and any involvement with the complainants in relation to their child's alleged treatment at George Watson's College. The paperwork in the pink folder is a chronology of all the correspondence between governors – myself included - and the school's legal advisers throughout the relevant time period. They will provide you with a great deal of the information you are seeking although I appreciate that it is a large volume of material to read in a very short space of time.

In particular, you will see there was a large volume of emails between 29th December 2016 and 9th February 2017 which related to the legal action brought against the school and Mr Hartley's court order against the complainants.

I have not printed off the 425 page document from the complainants which makes their case against the school as I understand you already have this.

I have not included the emails between myself and [redacted] of the Standards Clerks team at Holyood between 12th July 2017 and 2nd August 2017 which prove that I sought extensive advice from her about the interpretation of Data Protection legislation including para 10 of schedule 7 of the 1998 Data Protection Act which relates to exemptions in circumstances of legal action, but I am sure she would be happy to release them if that was helpful.

Yours sincerely,

Liz Smith

Commissioner for Ethical Standards in Public Life in Scotland

Joanna Hardy and Alastair Macfie
Clerks to the Standards, Procedures
& Public Appointments Committee
The Scottish Parliament
Room TG01
Edinburgh
EH99 1SP

Reference: MSP/2083/17-18-14/CG

10 January 2017

Dear Ms Hardy and Mr Macfie

Code of Conduct for Members of the Scottish Parliament
Complaint against Liz Smith MSP

I refer to the above and to my letter dated 21 November 2017 advising that I have received a complaint against Ms Liz Smith MSP. The complaint alleges the Ms Smith has breached various sections of the Code of Conduct for MSPs by disclosing alleged confidential material provided to her by the complainers.

In accordance with section 7(2) of the Scottish Parliamentary Standards Commissioner Act 2002, I now confirm that I have found the complaint is admissible. The provisions that I consider may be relevant for the purposes of the first test are those contained within Sections 7 and 8 of the 6th Edition, Revision 1 of the Code.

I will write to you further in due course.

Yours sincerely

Bill Thomson
Commissioner

MSP/2083/17-18/14
Appendix 4

The Scottish Parliament
Pàrlamaid na h-Alba

Register of Interests

Member's Name: Liz Smith

Constituency: Mid Scotland and Fife

Date on which initial statement lodged: 25 May 2016

- Guidance for MSPs: how to update the Register of Interests (111KB pdf)

All MSPs are required to provide details of their interests under the Interests of Members of the Scottish Parliament Act 2006 (asp 12). The Register of Interests of Members of the Scottish Parliament lists details of interests registered under categories such as remuneration, heritable property and gifts. More information about the exact nature of information required under each category of interest can be found at Volume 2: sections 1 and 2 of the Code of Conduct for Members of the Scottish Parliament.

Information on the exact nature of the requirement under each category can be found in the Interests of Members of the Scottish Parliament Act 2006 (asp 12).

Remuneration and related undertaking:
No registrable interests

Gifts:
No registrable interests

Overseas visits:
No registrable interests

Controlled transactions:
No registrable interests

Heritable property:
No registrable interests

Interest in shares:
No registrable interests

Voluntary:
I am a member of the General Teaching Council of Scotland.

I was formerly a member of the board of governors of George Watson's College (interest amended on 28 October 2017) and St Mary's Preparatory School (interest amended on 16 February 2018. [Amended interest 28 October 2017, Amended interest 16 February 2018, Ceased interest 16 February 2018]

I am President of the Scottish Women's Cricket Association. [Ceased interest 28 October 2017]

Contact

- Full Contact Details
- Email: Liz Smith
- Visit: Liz's website

Further information

Email our **Public Information Service** for more information.

The Scottish Parliament
Pàrlamaid na h-Alba

REGISTER OF MEMBERS' INTERESTS

Member's Name: Liz Smith

Region/Constituency: Mid Scotland and Fife

Date on which Initial Statement Lodged: 19 May 2016

Information on the exact nature of the requirement under each category can be found in the Interests of Members of the Scottish Parliament Act 2006.

Remuneration and related undertaking	No registrable interests
Gifts	No registrable interests
Overseas visits	No registrable interests
Controlled transactions	No registrable interests
Heritable property	No registrable interests
Interest in shares	No registrable interests
Voluntary	I am a member of the General Teaching Council of Scotland.
	I am a member of the board of governors of George Watson's College and St Mary's Preparatory School.
	I am President of the Scottish Women's Cricket Association.

Smith E (Elizabeth), MSP

From: [redacted]
Sent: 06 January 2017 12:00
To: Smith E (Elizabeth), MSP
Subject: Respect for All - important submission to anti-bullying consultation

Dear Liz Smith,

We are writing regarding your role in helping to formulate Respect for All, the Scottish Government's national approach to anti-bullying. Our evidence reveals critical shortcomings in current child protection measures that we have been trying to highlight as we feel strongly it should be included in the consultation.

These problems specifically impact children at private sector schools. In a parliamentary written answer on 1/7/16 (S5W-00992) John Swinney said "We expect that all Independent schools have an anti-bullying policy in line with the National Approach to Anti-Bullying for Scotland's Children and Young People". But regretably this is not always the case.

Our compelling insights derive mostly from well documented experience of severe management failures at one of Scotland's largest independent schools (which we are addressing directly through Education Scotland and others) and also at its parent charitable body. But we would emphasise that the issues our case reveals are much more general. To safeguard further children and families from suffering severe lifelong harms as ours did (and save the social and economic costs from private sector failures externalised onto wider society) we believe the following concerns require review:

1. It is unsatisfactory that independent schools can 'customise' GIRFEC inappropriately without suitable oversight. Our experience was that instead of providing any real protection its processes were harmfully repurposed as another instrument of institutional abuse. GIRFEC's provisions should be mandatory in their entirety, to cover thousands of children who in reality remain unprotected.

2. It is unsatisfactory that the legal requirement for schools to implement an effective anti-bullying policy applies only to schools in the state sector, with no equivalent duty on independent schools. In our case, the school had (or has) no real anti-bullying practices of any kind, instead sustaining a culture of institutional bullying and denial. All children in Scotland should enjoy this statutory protection.

3. It is unsatisfactory that Independent school governors are essentially unaccountable, with no obvious channels for complaint when concerns arise about gross malpractice or incompetence. Transparent pathways for complaints about individual governors' improper actions should be compulsorily promoted, ultimately enabling unfit individuals to be barred from holding any duty of care or position of trust over young people.

4. It is unsatisfactory that a Named Person can be assigned to parents/carers with no apparent channels for complaint when perceptions of impropriety arise. We believed the school's Named Person to be a central participant in our child's abuse, yet we were given no pathway to contest their position of power. Individuals found to be unfit should be barred from holding any such position of trust over young people.

5. It is unsatisfactory that inspection systems for private sector schools appear unfit for purpose, being so 'hands-off' that in practice there is no real inspection at all, beyond sporadic formal self-reporting that seems largely to be accepted at face value. In our case the signs of there being effectively zero anti-bullying practices in place were so self-evident that any effective inspection system should have detected this failure.

6. It is unsatisfactory that our efforts to record a criminal complaint about the school have gone apparently uninvestigated, after internal 'buck passing' due to the apparent lack of appropriate structures or perhaps even a reluctance to venture into a 'no go' area. Police Scotland should establish liaison staff to investigate complaints and support victims of abuse at independent schools, as already exists for the state sector.

7. It is unsatisfactory that Data Protection legislation in Scotland does not secure effective access for ordinary parents/carers. Our experience is that a politically powerful, wealthy, and legally well-connected school can flout the law's provisions with impunity, in a context where unaffordable court action is currently the only mechanism for enforcement of data release. An ombudsman with appropriate powers is required.

The Scottish Government has a responsibility to protect children at private sector schools as much as those in the care of local authorities. Parents can find themselves lured by a fraudulent prospectus that conceals real levels of bullying, then caught in a trap where to complain leads to constructive expulsion with no practicable alternative school spaces nearby. Their children suffer the consequences.

For your information, please review our main Complaint dossier. The large document summarises our original Complaints against the school in question, together with an addendum detailing the governors' subsequent improper efforts to deflect our requests for meaningful investigation. You can access this here:

[redacted]

Please treat this dossier with the utmost confidence, and do not share it further without our written permission. This testimony constitutes an unusually thorough, if not unique, first-hand account and analysis of independent school bullying and related institutional corruption and failure. We hope our work will not go to waste.

We would add that in view of your own association with the school in question, we suggest that on grounds of conflict of interest you should excuse yourself from any parliamentary discussions about the points we raise. However, should you feel motivated as a school governor to open-mindedly explore our experience and perspectives with a view to helping positively to resolve these regrettable circumstances, we would be happy to extend our goodwill to brief you privately.

Yours sincerely

[redacted]

Smith E (Elizabeth), MSP

From: Smith E (Elizabeth), MSP <Elizabeth.Smith.msp@parliament.scot>
Sent: 10 January 2017 14:11
To: [redacted]
Subject: email correspondence

Dear [redacted]

May I acknowledge receipt of the email you sent to me at the Scottish Parliament on Friday and also acknowledge the request regarding its confidential status.

As you correctly say, I am a Governor at George Watson's College - something which has appeared on my Register of Interests at the Scottish Parliament since I was first elected in 2007 and something to which I refer publicly prior to specific debates or committee sessions where there could potentially be a conflict of interest.

As you have indicated in your email, and as I am obviously aware as a governor of the school, the complaint currently lies with the authorities, so you will understand that it is not appropriate for me to comment further meantime.

Yours sincerely,

Liz Smith

Sent from my iPad

MSPs etc. sent link to 'Dossier' & Addendum on 6 January 2017

Angela Constance MSP, Cabinet Secretary for Communities, Social Security and Equalities

John Swinney MSP, Deputy First Minister and Cabinet Secretary for Education and Skills,

Christina McKelvie MSP, Convener, Equalities and Human Rights Committee

Roz Thomson, Clerk, Education & Skills Committee

Alex Cole-Hamilton MSP, Deputy Convener, Equalities and Human Rights Committee

Annie Wells MSP, Member, Equalities and Human Rights Committee,

David Torrance MSP, Member, Equalities and Human Rights Committee,

Jeremy Balfour MSP, Member, Equalities and Human Rights Committee,

Mary Fee MSP, Member, Equalities and Human Rights Committee,

Willie Coffey MSP, Member, Equalities and Human Rights Committee,

James Dornan MSP, Convener, Education and Skills Committee,

Johann Lamont MSP, Deputy Convener, Education and Skills Committee,

Colin Beattie MSP, Member, Education and Skills Committee,

Daniel Johnson MSP, Member, Education and Skills Committee,

Fulton MacGregor MSP, Member, Education and Skills Committee,

Gillian Martin MSP, Member, Education and Skills Committee,

Richard Lochhead MSP, Member, Education and Skills Committee,

Ross Greer MSP, Member, Education and Skills Committee,

Ross Thomson MSP, Member, Education and Skills Committee,

Tavish Scott MSP, Member, Education and Skills Committee,

Liz Smith MSP, Member, Education and Skills Committee,